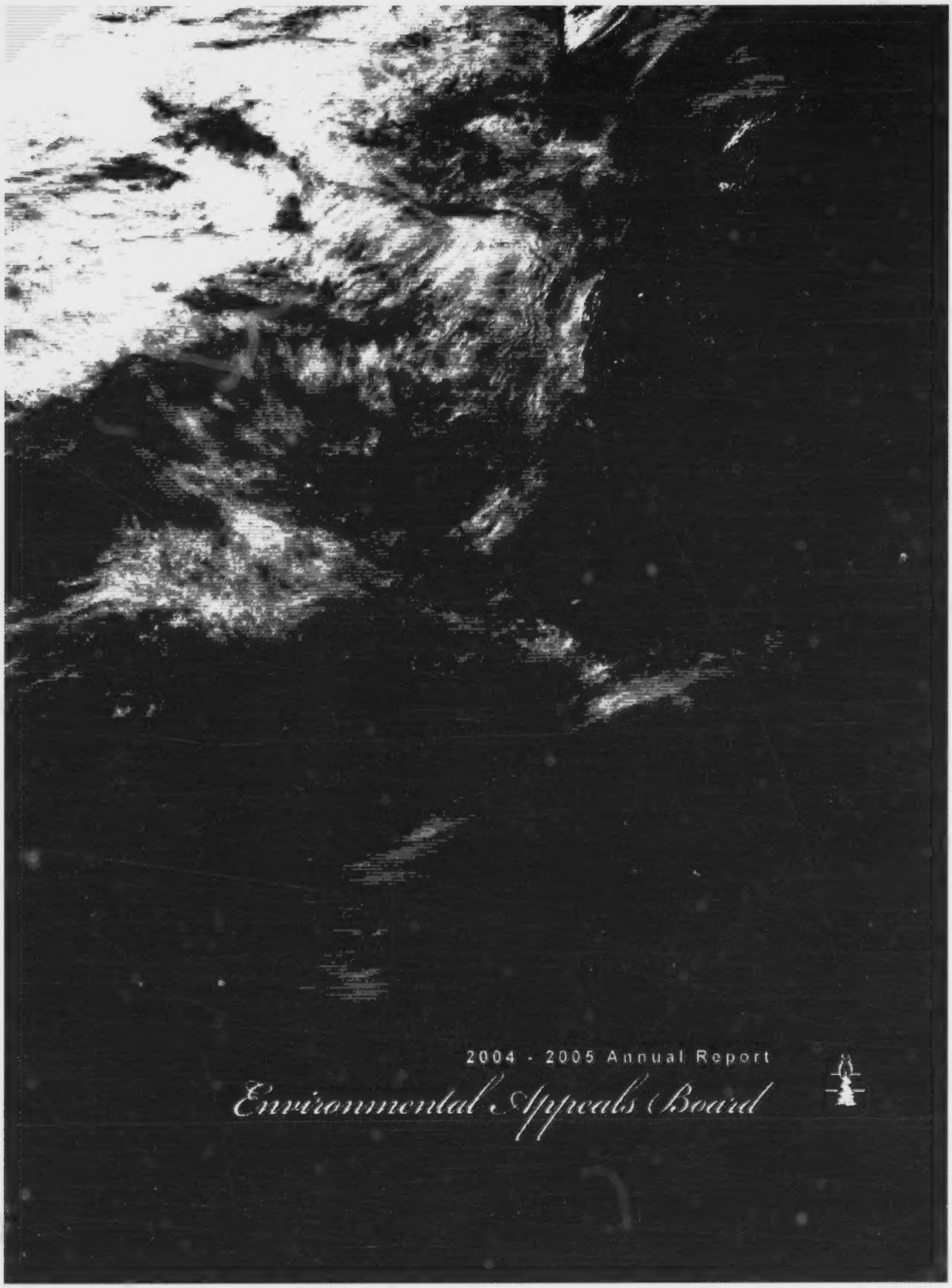

2004 - 2005 Annual Report

Environmental Appeals Board

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Environmental Appeals Board

Message from the Chair

DR. WILLIAM A. TILLEMAN

I am pleased to present the 2004 - 2005 Annual Report of the Environmental Appeals Board, covering the reporting year of April 1, 2004 to March 31, 2005.

On September 1, 2004, Dr. Frederick C. Fisher was appointed the new Chair of the Environmental Appeals Board. Before that time, I served as the Board's first chair, having been appointed by the Provincial Cabinet in September 1993 until August 2004. In December 2004, Dr. Fisher was appointed a Judge of the Provincial Court in Medicine Hat and had to step down as Chair to fulfill his new responsibilities. The departure of Dr. Fisher is a great loss to the Board but a tremendous gain for the Court. During his time as a Board member, serving from April 2002 to August 2004, and as Chair from August 2004 to December 2004, Dr. Fisher had a positive impact on the Board staff, Board members, and participants who appeared before the Board. He possesses great skill as a mediator and provided insight and intellect as a panel member. Upon his judicial appointment, I was reappointed as the Board's interim Chair until a new Chair can be chosen. It is expected that a new Chair will be in place by July 2005.

Although the Board underwent many changes and experienced a period of transition this reporting year, the Board accomplished many projects and saw a steady number of appeals filed. From April 1, 2004 to March 31, 2005, the Board received 124 appeals. The complexity and breadth of issues raised in the appeals continues to expand.

In 2004 the Board hosted two special dedications. In April 2004, it dedicated its mediation conference room to Dr. John P. Ogilvie for his outstanding service and contribution to the Board and, in particular, to our mediation program. Dr. Ogilvie served as a Board member from September 1994 to September 1997 and as Vice-Chair of the Board from September 1997 until his retirement in September 2003. During his time with the Board, he was a leader in our mediation program and will always be known for his charm, intellect, and kindness. In October 2004, under the tenure of Dr. Fisher, the Board chose to rename its hearing room the "William A. Tilleman, Q.C. Hearing Room," which was truly an honour for me. Serving as Chair for over 10 years has been a wonderful experience, one that I have cherished. I have learned and grown in many respects, and I consider my time with the Board as the highlight of my legal career.

In October 2004, the Board was pleased to hold its third alternative dispute resolution conference/training session with Dr. Lawrence Susskind and Mr. Patrick Field of the Consensus Building Institute. With continued support, the conference remains a success and has grown since the first one held in 2000.

The Board continues to use mediation to resolve many of the appeals that come before us. From April 1, 2004 to March 31, 2005, the Board held 18 mediations, and I am happy to announce that all 18 were successfully resolved. The Board is proud of having a 100 percent success rate for this reporting year. Since its inception in 1993, the

Board has held 139 mediations with respect to 581 appeals. Of those cases, 116 were resolved through mediation; an overall resolution rate of 83 percent. Mediation continues to be the Board's preferred way to resolve matters, because it promotes open and collaborative discussions and encourages participants to come up with their own solutions. The Board members, as mediators, work with the parties to increase understanding and identify the underlying interests of the participants. During this reporting year, the Board witnessed its most extensive mediation to date with respect to the Lynnview Ridge residential subdivision in Calgary, Alberta. Dr. Fisher, who was the Board appointed mediator, acted with great skill and diplomacy in working with the parties, including Imperial Oil, Devon Estates, Alberta Environment, the Lynnview Ridge Residents Action Committee, and the Calgary Health Region. The mediation lasted 18 months with an agreement being reached on March 31, 2005. The resolution of this matter is significant, because it helped the participants avoid a potentially lengthy appeal and likely a number of court challenges.

In March 2005, the Board began its introductory phase of ISO 9001:2000, which has the Board staff working together to review appeal procedures with the aim of making the procedures more efficient. To our knowledge, completion of this project will make us among the first Canadian agencies within a regulatory system to be ISO 9001:2000 certified.

In 2005, the Board relaunched its website with a fresh look and new information. Individuals can now file electronic Notices of Appeal, view recent news releases and the status of active appeals, and access all the decisions the Board issues. The Board's website also allows users to download a variety of Board publications as well as judicial review decisions. In 2005 - 2006, the Board plans to update its website with information specifically on mediation.

On behalf of myself and my learned friend and outstanding Chair, Judge Fisher, I would like to thank the Board members for their continued dedication. Judge Fisher's departure leaves a gap; however, the remaining members have great expertise, judgement, and professionalism and will ensure the continuing success of the Board. Thank you to the Board's staff who help to keep the Board running smoothly. You are a wonderful team of individuals with your own unique strengths. I would also like to wish the new Chair all the best and continued success in leading the Environmental Appeals Board in the years to come.

Sincerely,

William A. Tilleman, Q.C.

JUDGE FREDERICK C. FISHER

THE HONOURABLE JUDGE F.C. FISHER

The Provincial Court of Alberta

Court House
[redacted]
T1A 0K9

[redacted]
e-mail: [redacted]
Fax: [redacted]

ENVIRONMENTAL APPEALS BOARD ANNUAL REPORT

I have been given the opportunity of providing a report and comments for the Annual Report of the Board.

My tenure with the Board began when Dr. Taylor, the then Minister of the Environment, inquired about the possibility of me letting my name stand for a Board position as Dr. Tilleman was looking for a veterinarian to provide expertise in that area to the Board. Dr. Taylor thought with my veterinary and legal background that I might be an asset to the Board. I was appointed to the Board in April 2002, and then appointed to Vice Chair in August 2003. I was then appointed as Board Chair in September 2004 and expected to fill the shoes of Dr. Tilleman. An impossibility.

Unfortunately or fortunately, depending on how you look at the situation, I was appointed a Judge of the Provincial Court of Alberta in December 2004 and of course, had to resign from the Appeals Board.

I must say that in one respect I was disappointed that I had to give up my association with the Board members, staff and especially my close association with Dr. Tilleman and Gilbert Van Ness, General Counsel for the Board.

The Mediation process is a very important part of the Board's function and the success of the process is due to the expertise of the Board members and their knowledge of the particular subject and the mediation training that is undertaken by each Board member. There is much more satisfaction in resolving a matter than telling the parties how the matter will be resolved. Usually when the parties are told the resolution, no one is happy. The mediation process is a very important part of the Board's function and the process is very successful due to the expertise of the Board members and their knowledge of the subject and the mediation training that is undertaken by each Board member. A resolution percentage of greater than eighty per cent is the highest of any Tribunal in the Province and the Board members should be proud of the success that they achieve.

The Board does deal with a small percentage of appeals by way of hearings which are more formal than the mediation process and of course, end with the Board panel making a decision for the parties.

I must say that the parties are in most cases represented by lawyers and without exception these lawyers are always well prepared, knowledgable and most professional. I include in this the lawyers who act on behalf of the Department of Environment.

The Environmental Appeals Board, in my mind, is the most important Appeal Tribunal in the Province of Alberta because it allows the ordinary citizen to have valuable input into matters that affect the Alberta Environment. The Board members take the appeals filed by the citizens of the Province very seriously and in and every case attempt to do what is in the best interest of the Environment of Alberta.

I would like to thank the Board members for their help and assistance when I was appointed as a member and when I was appointed Board Chair.

I cannot say enough about the staff of this Board, they are all hard working, professional and most helpful. Each staff member goes out of their way to make sure that the public understands the appeal process and what is expected of them after they file an appeal.

This Board owes its successes to Dr. Tilleman who, since the inception in 1992, has made sure that the most qualified individuals have been appointed to the Board. He has put together a staff second to none and has made sure that each and every citizen of this Province has the opportunity to be part of the decision in making Alberta a better place to live.

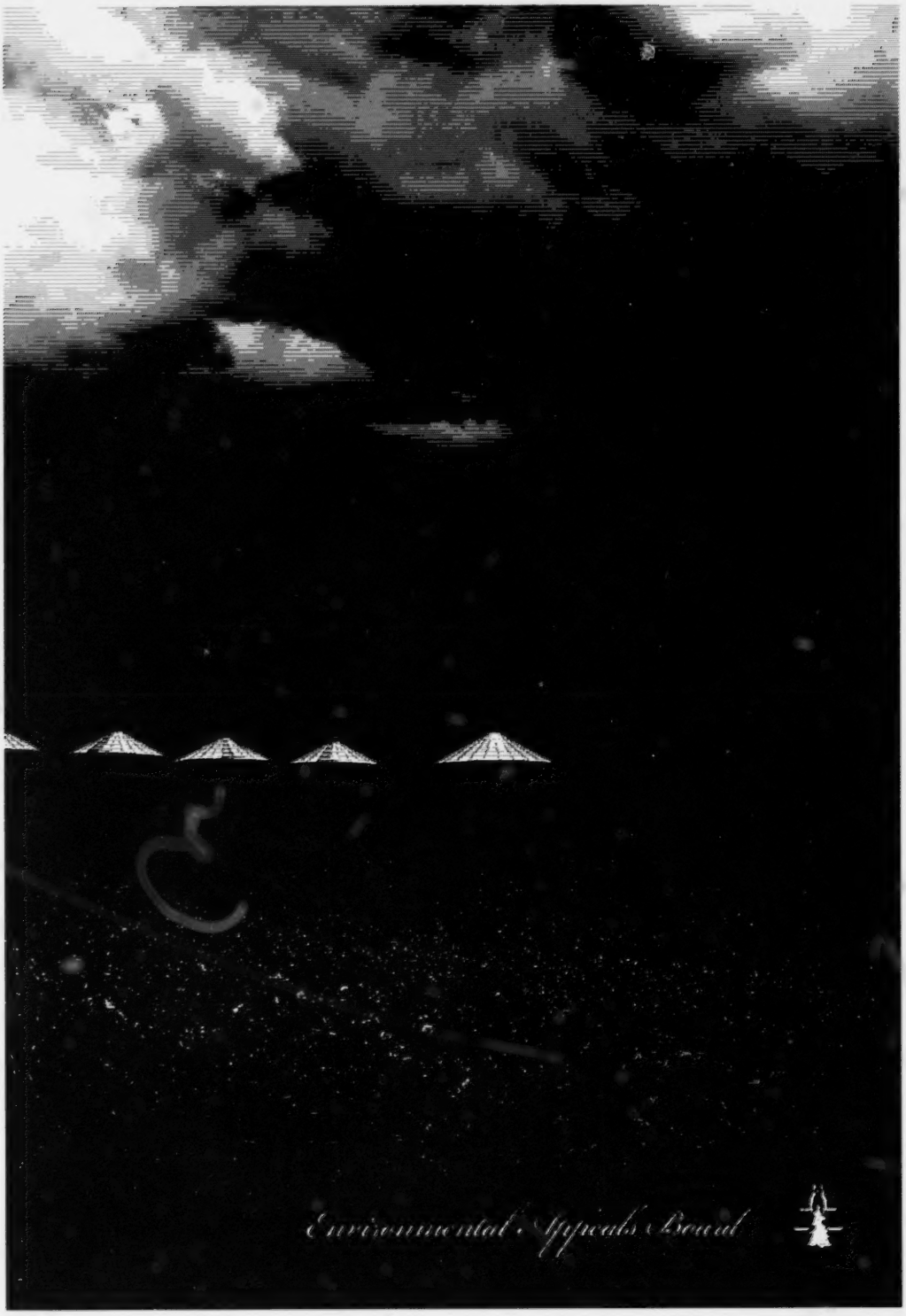
My very last duty is to thank the Board members, staff and especially Dr. Tilleman for all the support and the opportunity to be part of the best Board in the country.

Thank you.

Frederick C. Fisher
Judge of the Provincial Court of Alberta

Introduction

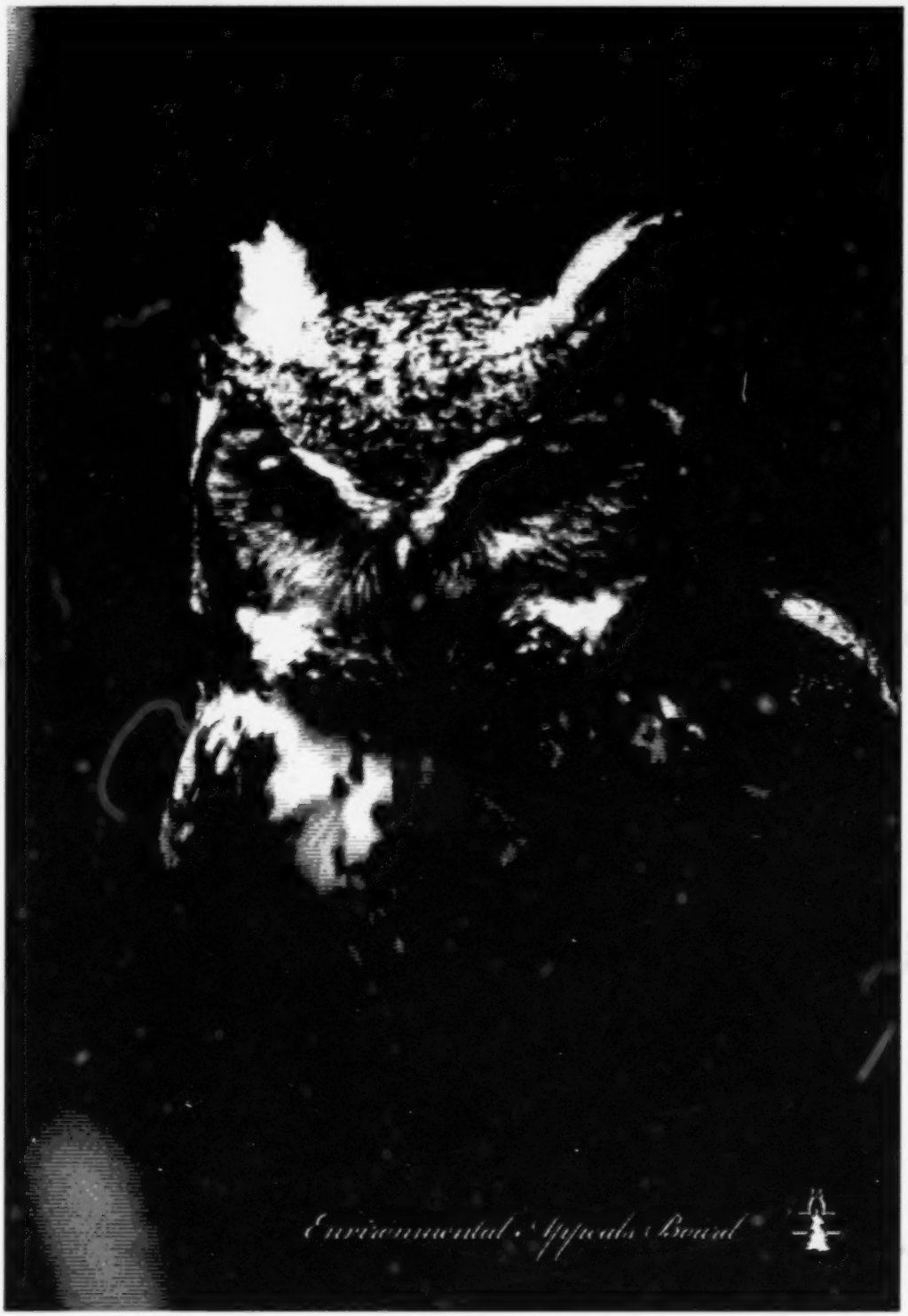
Established on September 1, 1993, by the proclamation of the *Environmental Protection and Enhancement Act*, ("EPEA") the Environmental Appeals Board ("the EAB" or the "Board") provides Albertans and industry with a mechanism to appeal certain decisions made by Alberta Environment. The scope of the Board's mandate expanded with the implementation of the *Government Organization Act* in 1995 and again in 1999 with the *Water Act*. This has significantly increased the Board's workload and function. The Board is committed to the impartial and efficient resolution of all matters before it and is committed to ensuring the appeal process is fair, thorough, timely, and cost-effective.


Environmental Appeals Board

Vision Statement

The Environmental Appeals Board's vision is to promote a high quality of life in Alberta through the timely and thorough review of environmental decisions.

Albertans value their environment for the ecological, economic, and social benefits it provides. They expect their water to be safe, their air to be clean, their land to be productive, and careful decisions to be made about the protection and management of the environment for generations to come. Albertans expect to be treated fairly and have matters involving their applications or appeals heard efficiently and effectively. The Board is committed to ensuring businesses and citizens have the opportunity to provide advice respecting environmental decisions recognizing the shared responsibility of all Albertans for the environment.


Environmental Appeals Board

Mission Statement

The Environmental Appeals Board will advance the protection, enhancement, and wise use of Alberta's environment by providing fair, impartial, and efficient resolution of all matters before it.

Environmental Appeals Board

Board's Structure and Organization

The Board is in a unique position in relation to the Department of Environment and the Ministry of Environment. The Board is under the umbrella of the Ministry and reviews and hears appeals regarding decisions made by Directors (statutory decision-makers) within the Department of Environment. Being an adjudicative body, the Board operates at arms-length from the government to maintain the necessary degree of independence and impartiality. However, for budgetary reasons and for the purposes of providing the Minister with its decisions and reports once they are completed, the Board remains aligned with the operations and goals of the Ministry of Environment.

The Board consists of two distinct, yet very interconnected entities: Board members and Board staff. The Provincial Cabinet appoints Board members, while the Government of Alberta, under direction of the Chair, employs Board staff. Collectively, Board members have a variety of expertise and knowledge in environmental matters. Their decisions on appeal matters before them are based on impartial, unbiased, and independent judgement. Board staff, employed by the public service, embrace the fiscal, environmental, and human resource goals of the government and, at the same time, remain focused on supporting the objectives and goals of the Board and its operations. Further, Board staff are dedicated to the operating principles of the Board and its mission.

Board members as of March 31, 2005:

Dr. William A. Tilleman, Q.C. (Chair), Calgary;
Dr. M. Anne Naeth, Edmonton;
Mr. Ron V. Peiluck, Bragg Creek;
Dr. Steve E. Hrudey, Edmonton;
Mr. Al Schulz, Sherwood Park;
Dr. Alan J. Kennedy, Cochrane;
Mr. Dallas K. Miller, Q.C., Medicine Hat;
Dr. Harrie Vredenburg, Calgary;
Mr. Jim Barlishen, Lundbreck; and
Ms. Marilyn Kansky, Edmonton.

Environmental Appeals Board

Core Values

In conducting its business, the Board is guided by its belief in:

Ecosystem Sustainability

Consistent with the legislation, the Board believes that a healthy environment is essential to the integrity of ecosystems and human health and to the well being of Albertans.

Sustainable Development

The Board hears and processes appeals in a fair and effective manner striving to ensure the wise use of Alberta's renewable resources with the goal that future generations may benefit from them.

Shared Responsibility

The Board shares the responsibility of managing Alberta's natural resources by providing Albertans the opportunity to have a voice through the Board's appeal procedures.

Public Involvement

The Board ensures information on its mandate and rules and regulations is freely accessible. The Board provides Albertans with the opportunity to become active participants in appeals through hearings and creative processes such as mediation.

Informed Decision-Making

The Board hears and processes appeals on the basis of relevant scientific, technological, and environmental information to make fully informed decisions.

Mediation as the Preferred Way to Resolve Matters

Board mediations promote open and collaborative discussions between participants and encourage individuals to come up with their own solutions. Mediation can help increase communication, develop a better understanding of the participants' concerns, and offer win-win solutions.

Public Service

The Board is dedicated to providing excellent service to Albertans in all regions of the province.

Healthy and Supportive Work Environment

The Board values its staff and Board members and strives to provide a working environment where open, honest, and respectful communication is encouraged. The Board also supports its staff in maintaining a healthy, active lifestyle.

Environmental Appeals Board

Core Business

The Board's core business is to hear appeals from applicants and affected parties on decisions regarding environmental approvals, water licences, enforcement actions, reclamation certificates, and other matters. The goals of the Board are linked to the core business and goals of the Ministry of Environment and the core business of the Alberta government, which are people, prosperity, and preservation.

Social (people), economic (prosperity), and environmental (preservation) effects of resource development are reviewed through the Board's appeal process to ensure that Alberta's natural resources are sustained, the high quality of Alberta's environment is maintained, and resource development contributes to prosperity. The Board is committed to contributing to the sustainable development of Alberta's natural resources for the benefit of Albertans today and in the future.

The Board continues to work to find ways of operating more efficiently and effectively while maintaining quality services.

Annual Overview of Appeals

During April 1, 2004 to March 31, 2005, many of the appeals before the Board raised issues that reflect an increasing awareness by Albertans of the importance of the environment and the natural resources that we have in this province. There were also issues raised in response to changes to certain policies of Alberta Environment.

Water continues to be a significant issue before the Board. The use of potable water for oilfield injection by the oil and gas industry came before the Board in a number of appeals. In one of these appeals, the Board recommended, and the Minister accepted, a reduction in the volume of water allocated to the company and a requirement that the company continue to look for alternative sources of water. The Board's recommendations kept in mind the purposes of the *Water Act*, which requires balancing environmental protection with the need for economic growth and prosperity.

In 2004, Alberta Environment introduced a new program to respond to the increasing number of applications for reclamation certificates. The old program required a site visit by an Alberta Environment inspector for every application before a reclamation certificate could be issued. Under the new program, Alberta Environment reviews a more detailed application and, if all parameters detailed in the application are within the guidelines, the reclamation certificate is issued without the need for a site visit. If information is missing from the application or the application does not meet the guidelines, it is refused. With the change to the program, the Board has seen an

increase in the number of appeals relating to reclamation certificates, both from oil and gas companies for the refusal to grant certificates and from landowners where certificates have been granted. Although most of these appeals have been successfully mediated, the Board expects the appeal rate will, in all likelihood, continue to rise until both oil and gas companies and landowners have a better understanding of the new program.

Another issue that came before the Board was the decision by Alberta Environment to amend an existing water licence to allow an irrigation district the right to provide water to users for purposes other than traditional irrigation. The appellants who brought this appeal objected to the amendment because, in their view, the river system is over allocated and the amendment allows the irrigation district to "by-pass" provisions in the *Water Act* that could provide for the conservation of water. Although the appellants raised a number of interesting arguments with respect to the impact of Alberta Environment's decision on the river system, the appeals were dismissed because the appellants were not directly affected and, therefore, did not have standing.

Standing for appellants continues to be an issue, particularly with respect to appeals filed by groups. In a number of cases this year, the Board could not accept appeals filed by groups because the groups did not demonstrate that they were "directly affected." The legislation that governs the Board requires an appeal be filed by a person who is "directly affected" by the decision of Alberta Environment. Decisions by Alberta Environment about the environment can arguably have a general affect on every Albertan in some way. However, the Legislature has clearly indicated the right to appeal is limited to a smaller class of persons, in that a person must be "directly affected" in order to file a valid appeal. When groups file an appeal, the Board must be able to find the majority of the members of the group would be personally directly affected in their own right. It is frequently this connection that is missing in the evidence and arguments presented to the Board. The Board encourages groups to contact Board staff for information on how to file an appeal in such cases.

The Board's jurisdiction to hear appeals was challenged in two different ways this year. The first challenge was in relation to a project that had previously undergone a review by a joint Alberta Energy and Utilities Board and Canadian Environmental Assessment Agency review panel. Appeals are sometimes challenged on whether the issues in the Notices of Appeal were adequately dealt with by the Alberta Energy and Utilities Board or the Natural Resources Conservation Board. Under the *Environmental Protection and Enhancement Act*, the Board cannot hear an appeal if the person filing the appeal had the opportunity to participate in a review or hearing held by the Alberta Energy and Utilities Board or the Natural Resources Conservation Board, at which all the issues were adequately dealt with. The Board also loses jurisdiction if all the matters were dealt with in a public review under the *Canadian Environmental Assessment Act* in which the Government of Alberta participated. In the first case where the Board was challenged, Alberta Environment issued an amending approval with respect to modifications made to the original project. In this case, there was no issue that a joint review panel had heard submissions on the original project, and the appellant had participated. What was at issue in this appeal was whether the joint review panel had adequately dealt with all of the issues in the Notices of Appeal. The Board found there was a difference between the original project that was presented to the joint review panel and what was allowed under the amending

approval. The Board recognized it does not have the jurisdiction to rehear issues dealt with by the joint review panel, but it retained jurisdiction on the part of the project that was allowed under the amending approval that was not dealt with by the joint review panel.

The second jurisdictional challenge was raised by a First Nation, who argued that Alberta Environment does not have jurisdiction to grant approvals under the *Water Act* for projects on private land that could have an effect on First Nations reserve lands. In this case, the First Nation argued the approval under appeal could affect a water body on their lands. The First Nation argued Alberta Environment should have dealt with the First Nation, or the Government of Canada on their behalf, prior to issuing the approval, and without this prior consultation the approval should not have been issued and is void to the extent it may impact the reserve lands. The jurisdictional matter did not have to be decided by the Board as a resolution was reached, and the jurisdictional motion was withdrawn.

In this appeal, as well as others involving First Nations, some of the participants argued the government has a fiduciary obligation to First Nations. The role of administrative tribunals in addressing the concerns of First Nations such as this is an emerging issue. This area of law continues to evolve, and the Board continues to closely follow the decisions made on this issue by the courts and the Legislature.

Environmental Appeals Board

Balancing Purposes and Interests

In making decisions, the Environmental Appeals Board is required to balance a number of different purposes and interests. The purposes the Board is required to consider are found in section 2 of the *Environmental Protection and Enhancement Act* and in section 2 of the *Water Act*. Section 2 of the *Environmental Protection and Enhancement Act* provides:

"The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing the following:

(a) the protection of the environment is essential to the integrity of ecosystems and human health and to the well being of society;

(b) the need for Alberta's economic growth and prosperity in an environmentally responsible manner and the need to integrate environmental protection and economic decisions in the earliest stages of planning;

(c) the principle of sustainable development, which ensures that the use of resources and the environment today does not impair prospects for their use by future generations;

(d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs and decisions;

(e) the need for Government leadership in areas of environmental research, technology and protection standards;

(f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;

(g) the opportunities made available through this Act for citizens to provide advice on decisions affecting the environment;

(h) the responsibility to work co operatively with governments of other jurisdictions to prevent and minimize transboundary environmental impacts;

(i) the responsibility of polluters to pay for the costs of their actions;

(j) the important role of comprehensive and responsive action in administering this Act."

Section 2 of the *Water Act* provides:

"The purpose of this Act is to support and promote the conservation and management of water, including the wise allocation and use of water, while recognizing:

(a) the need to manage and conserve water resources to sustain our environment and to ensure a healthy environment and high quality of life in the present and the future;

(b) the need for Alberta's economic growth and prosperity;

(c) the need for an integrated approach and comprehensive, flexible administration and management systems based on sound planning, regulatory actions and market forces;

(d) the shared responsibility of all Alberta citizens for the conservation and wise use of water and their role in providing advice with respect to water management planning and decision-making;

(e) the importance of working co-operatively with the governments of other jurisdictions with respect to transboundary water management;

(f) the important role of comprehensive and responsive action in administering this Act."

An example of how the Board balances these purposes and the interests of the parties that come before it can be found in *Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy Ltd.* (26 April 2004), Appeal Nos. 03-116 and 03-118-121-R (A.E.A.B.). In this case, the Board considered an allocation of fresh water granted to Capstone Energy Ltd. for oilfield injection and stated:

> "[Capstone Energy Ltd., the Certificate Holder,] ... intends to use the fresh water for 'oilfield injection,' which is the injection of water into an oil-bearing geological formation to enhance the amount of oil that can be recovered. The parties that have filed appeals represent a broad range of interests, but share the common view that fresh water is a scarce resource and should be rarely used, if at all, for oilfield injection. The fundamental basis of their objection is the contention that once the fresh water is injected into an oil-bearing formation, the fresh water is gone forever. This conflict is representative of a broader issue that is currently being examined by Alberta society as a whole: How can we best use our dwindling water resources in times of increasing demand?"

Alberta has been referred to some as 'God's Country', blessed with an unparalleled environment, abundant natural resources, and a burgeoning economy that has made it one of the best places in the world to live. This juxtaposition of the environment and the economy is at the heart of the matter before the Board; the Board must balance protection of our environment and continuing to support economic growth. In undertaking this balancing exercise, the Board recognized the critical importance that the oil and gas industry plays in Alberta; the development of our oil and gas resources is largely responsible for the high quality of life that Albertan's enjoy. The Board also recognizes the work that the oil and gas industry has undertaken to be environmentally responsible and reduce their reliance on fresh water; we commend them for this.

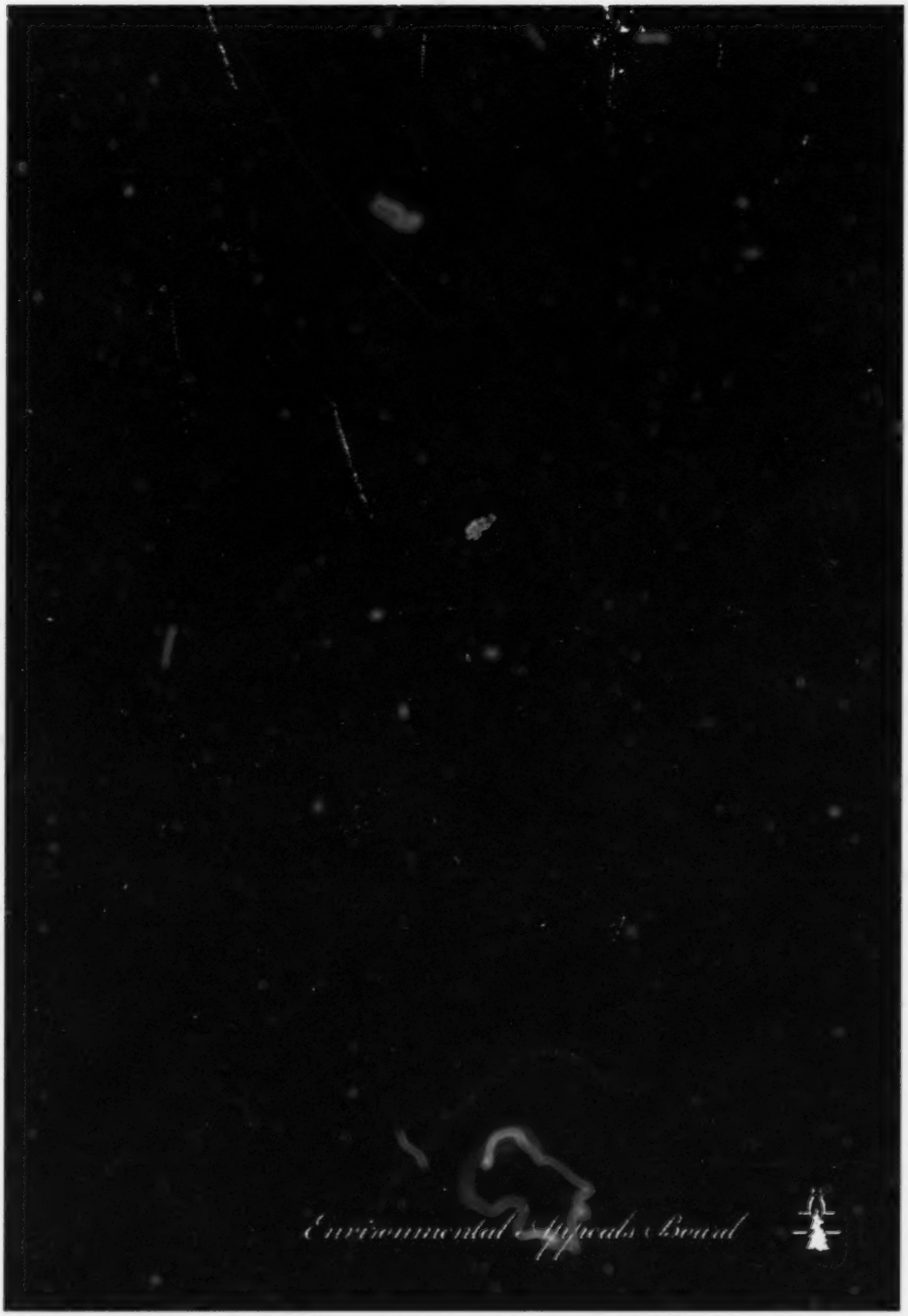
The task before the Board is to balance protection of our water supply with the needs of the oil and gas industry, taking into account sustainable development principles. Fresh water is essential for human existence: we need it to drink, we need it to grow our food, and we need it to live. This has been aptly described in the title of the Government of Alberta's policy review: Water for Life. At the same time, we also need the oil and gas industry. It has been said that, at least in Alberta, a loaf of bread is actually made of oil (along with the hard work of those in the agriculture industry). Most Albertans are dependent on the oil industry in some way to pay their bills and buy their food.

These appeals have resulted in one of the most difficult "balancing act" cases to come before the Environmental Appeals Board in its ten plus years of existence. We are effectively being asked to choose between competing purposes of water use. In keeping with the importance of this task, luckily the participants before the Board represent almost all parts of Alberta's society. The oil industry, which we have already discussed, is being represented by the Certificate Holder, and the general public interest is being represented by Alberta Environment.

The agriculture industry is being represented by a group of individual landowners. They appear before the Board representing their own interests as the project's immediate neighbours and as people whose very livelihood is dependent on a stable and secure water supply. However, they also remind us of the importance of the agriculture industry as a cornerstone of the Alberta economy and our way of life; the agriculture industry literally provides the food that we eat. The Board is also keenly aware of the dependence of the agriculture industry on sustainable supplies of water; the agriculture industry would not be able to function without water. The Board is also aware that the agriculture industry in Alberta has been faced with many challenges in the last number of years, including significant water shortages of its own.

Alberta's municipalities are also represented before the Board by the City of Red Deer and the Mountain View Regional Water Services Commission, which provides water to a number of municipalities in the Red Deer area. The municipalities that have come before the Board have three fundamental interests: ensuring a sustainable and dependable water supply for the people that they serve, ensuring a sufficient water supply for their continued economic growth, and preserving the natural environment to support the quality of life that their citizens desire. The Board recognizes that the municipalities in Alberta have been faced with the challenges of both population and economic growth, and the pressure that this places on sustaining their infrastructure, including their water supplies.

The others before the Board represent a broad range of interests from recreational users such as Mr. Mike Gallie, Trout Unlimited, and the Normandeau Cultural and Natural History Society to individual citizens such as Ms. Dorene Rew to groups of citizens such as the Red Deer County Ratepayer Association and the Council of Canadians (Red Deer Chapter). The Board has had the benefit of the full input from all of these parties, and have looked at their evidence whether or not we have cited it, in making its Report and Recommendations to the Minister of Environment on this important matter." (Footnotes and references removed.)


Environmental Appeals Board

Mediation Program

From April 1, 2004 to March 31, 2005, the Board held 18 mediations, all of which were successfully resolved, resulting in a 100 percent success rate for this reporting year. Since the Board's inception in 1993, it has conducted 139 mediations with 116 being successfully resolved. This reflects an overall success rate of 83 percent.

The type of mediation used by the Board is known as interest-based mutual gains dispute resolution. This means the Board's mediators work to uncover the real reason or motivation behind the dispute and find out what is important to the participants in reaching a solution. These are known as the participants' interests. Once the participants' interests have been uncovered, the Board's mediator helps the participants come up with mutually agreeable solutions that meet as many of these interests as possible. This is the mutual gain that is being sought.

When participating in mediation through the Board's process, the participants need to take into consideration the legislation that governs both the Board and Alberta Environment. A mediator is used to facilitate an open discussion and acts as a neutral that works closely with the participants to uncover underlying interests and assists in the exploration of solutions. The mediator is not an advocate for any side and remains neutral to create an environment of trust within the mediation. Confidence in the mediator's sense of fairness and impartiality creates a greater willingness of the participants to have a frank discussion and generate options, leading them to a mutually agreeable solution.

Before mediation takes place, the Board's staff conducts pre-mediation work through written and verbal communication. The Board's staff works to educate the participants on mediation and establishes the date, time, and location of the mediation, and confirms who will be in attendance. For many of the participants, it is their first time dealing with the Board and with mediation. Therefore, educating the participants on what they can expect is important in creating a fair and level playing field. Board staff are also helpful in diffusing tension or emotion before a mediation takes place.

Board members act as mediators, and this approach has proven to be very successful. Board members are trained in mediation by taking various alternative dispute resolution courses and training by Dr. Lawrence Susskind and Mr. Patrick Field. Dr. Susskind is the Director, Public Disputes Program and Visiting Professor for the Program on Negotiation at Harvard Law School. Dr. Susskind is the Founder and President of the Consensus Building Institute ("CBI"), which is a not-for-profit organization that provides mediation and dispute system services to public and private clients worldwide, and is the head of the Environmental Policy Group in the School of Architecture and Planning at Massachusetts Institute of Technology. Mr. Patrick Field is the Managing Director of CBI and the Director of the Institute's North America Program.

Each of the Board members is respected in their fields, and they bring their recognized expertise to the mediation. Board members use their expertise to promote effective communication between the participants and to ensure a level playing field is established where a complete and open discussion can take place.

The Board believes it is important to continually review and improve the way it conducts mediations and therefore, it requests participants to provide feedback via anonymous survey forms. The majority of participants have indicated that mediation was a positive and effective process in resolving their disputes and indicated they would use the process again. Generally, participants thought mediation was useful because it gave them the ability to speak candidly, restored relationships, and they were encouraged to develop their own solutions.

Given the continued success of the Board's mediation program, it is an area that will continue to expand and improve. Overall, the Board has found mediation to be very effective in addressing a variety of environmental matters and as a result considers this process the preferred way to resolve appeals.

In 2006, the Board is planning to make additions to its website to include information on mediation. The website will include a frequently asked questions section, pictures of its mediation facilities located at its office in Edmonton, helpful website links, and Board publications relating to mediation.

Partnership Conference

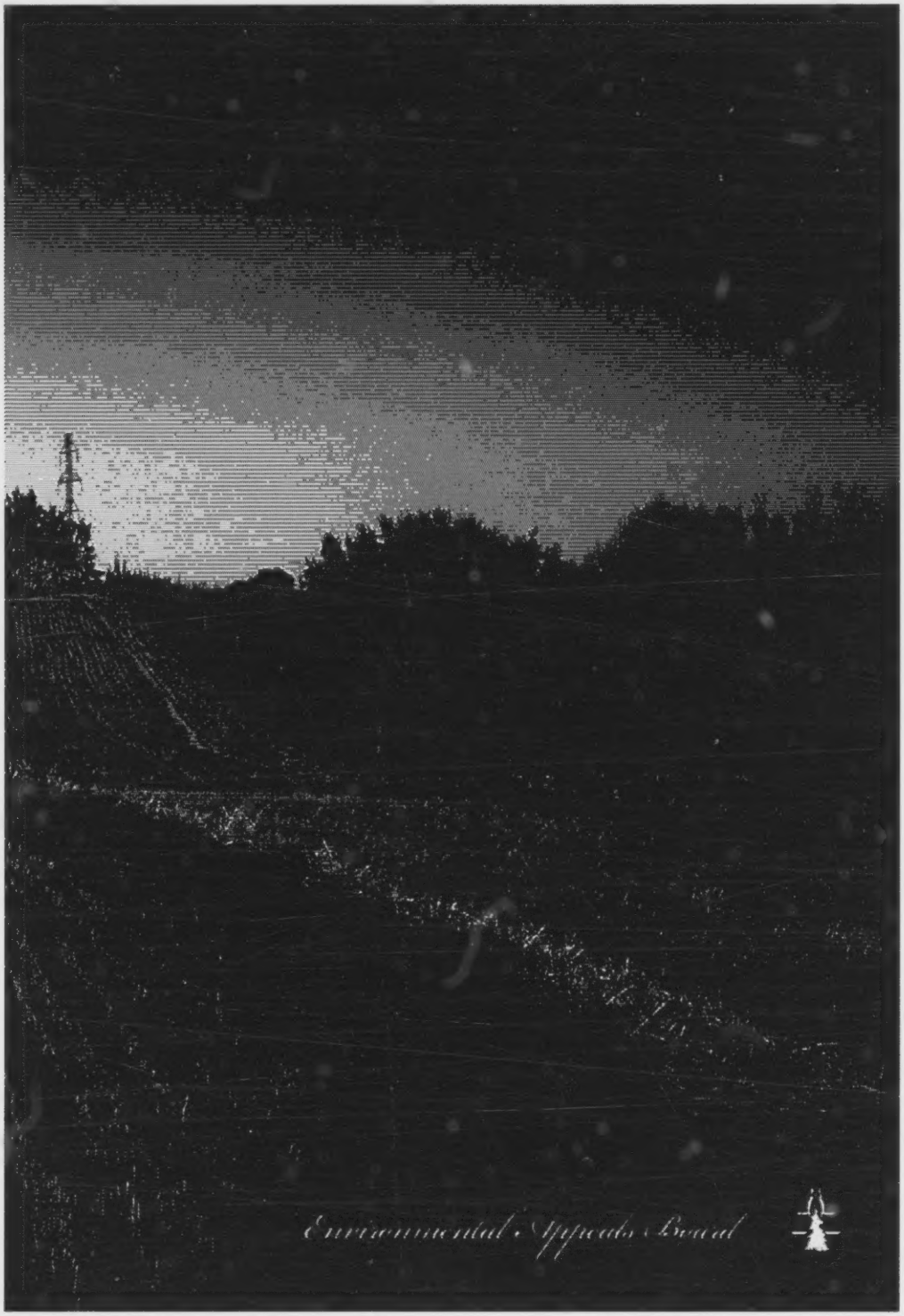
As part of the Board's ongoing commitment to the resolution of disputes through mediation, it initiated a conference and training session in 2000 focused on building partnerships using an interest-based approach. The conference was well received, and as a result held subsequent conferences in 2003 and 2004.

The conference, entitled "Forging Partnerships Between Federal/Provincial Governments and Members of First Nations" also fulfills the Board's commitment to support cross-ministry initiatives such as the Aboriginal Policy Initiative. The purpose of this initiative is to work with Aboriginal people, federal and municipal governments, industry, and other interested parties to improve the well-being and self-reliance of Aboriginal people and clarify federal, provincial, and Aboriginal roles and responsibilities. The Board recognizes the increasing role and importance of First Nations in the environmental regulatory process and is working to address this issue through these conferences.

In 2004, the conference and training session was held over a two-day period and consisted of a number of presentations and simulations to explain and demonstrate interest-based negotiations in general and with respect to First Nations. The Board received many encouraging comments and was pleased at the level of interest and

diversity of the participants. Overall, the conference was a success, and the Board is looking at expanding it in the years to come by incorporating a more diversified perspective in its discussions on alternative dispute resolution.

The 2004 conference was co-sponsored with financial assistance from Alberta Aboriginal Affairs and Northern Development, Alberta Solicitor General, Alberta Sustainable Resource Development, Alberta Environment, and the CBI. It is through the generosity and support of these co-sponsors that the Board is able to continue to promote the principles of interest-based mediation and negotiation.


Environmental Appeals Board

Summary of Results of the Board's Business

Goal 1: SUBSTANCE: Treat parties with fairness and respect and decide matters with impartiality, integrity, and in accordance with principles of natural justice.

Strategy A: The Board will promote fairness in its mediations.

Performance Measure
Provide parties with information on mediation prior to attending mediations before the Board.

Target Met
Yes

Results
In order for mediations to be fair and effective, the Board works to establish a level playing field, where all participants are provided with relevant information before attending mediation. When the Board receives a Notice of Appeal, which initiates the Environmental Appeals Board's involvement, an acknowledgment letter is sent to the participants containing information on the Board and its mediation program. If mediation is appropriate, a mutually agreeable date and location are set and participants are forwarded a Participants' Agreement to Mediate. This agreement, which is reviewed and signed before mediation takes place, informs participants on what they can expect during mediation by outlining their rights, the mediator's role, and the procedures and guidelines that will be agreed to by all.

Discussions take place before mediations between Board staff and the participants to ensure all questions are answered and to provide clarification where necessary. This has been helpful in building rapport and trust, helping participants prepare, and easing anxieties or apprehensions before mediation takes place. Board staff are committed to assisting those that come before the Board and make time available after work or on weekends to take phone calls, attend meetings, or even resolve matters before going to mediation.

Future Focus[1]
The Board is currently working on creating a section specifically devoted to mediation for its website. The section will include information describing Board mediations, when mediation is and is not appropriate, a frequently asked questions section, pictures of its mediation facilities located at its office in Edmonton and helpful website links. The Board plans to post publications specifically related to mediation and administrative tribunals including *Amicable Dispute Resolution: The Mediation Alternative and the Alberta Environmental Appeal Board* and *Using Mediation in Canadian Environmental Tribunals: Opportunities and Best Practices.* The Board is also looking at implementing a video component to its website, including demonstrations explaining the mediation process.

Performance Measure
Provide Board personnel trained in mediation as facilitators.

Target Met
Yes

[1] Future Focus outlines projects the Board is currently working on or may pursue in the future. For specific goals and objectives please see the Board's 2004-2007 Business Plan.

Results

Board members are trained in mediation by taking conflict resolution courses and attending conferences. For several years, Board members have received mediation training through Dr. Lawrence Susskind, Founder and President of the CBI., and Mr. Patrick Field, CBI. The Managing Director of CBI, and Director of the Institute's North America Program, Mr. Patrick Field, works with Dr. Susskind to provide training where Board members are presented with theory, analyze case studies, practice skills using role-plays, and benefit from immediate debriefing and constructive feedback. During training, experienced Board members are encouraged to share their experiences as mediators with newer Board members.

Board members also attend conflict resolution courses through the Alberta Arbitration and Mediation Society and the Legal Education Society of Alberta.

In addition to training, new Board members are provided with a mediation guide to assist them in their preparation as a mediator. New Board members are encouraged to observe mediations conducted by experienced Board members to become familiar with the Board's approach to mediation. As support, the Board's General Counsel and Settlement Officer, who holds a certificate in Conflict Management through the Alberta Arbitration and Mediation Society, accompanies all new Board members when conducting their first mediations. Staff with experience in conflict resolution conduct extensive pre-mediation work and assist Board members as required in carrying out mediations.

The Board has also developed, in partnership with the CBI, a how-to manual on mediation for all Board members. This manual provides in-depth information with respect to participating in Board mediations..

Future Focus

The Board continues to research ways to improve its mediation training program. Currently, it is looking into a co-mediation option that would pair new Board members with those members who are more experienced in conducting mediations. This option would present a "hands-on" learning approach that would allow Board members to gain knowledge and experience in a live situation.

In an effort to keep the Board's information up to date and relevant, it plans to continually review, update, and expand the how-to manual that has been developed in conjunction with the CBI.

Performance Measure

Conduct satisfaction surveys at the conclusion of each mediation.

Target Met

Yes

Results

Over the past year, the Board sent out 119 mediation surveys and received 66 in response.

The Board distributes satisfaction surveys at the conclusion of each mediation. Participants are asked to complete questions that assess their level of satisfaction regarding the quality of the Board's mediation program. The results of the mediation surveys are kept anonymous. Finding out what participants liked, disliked, and what could be improved in our mediations, helps the Board make changes and streamline its mediation program. The Board also uses feedback in the development of Board member training sessions where staff and members discuss new ways to deal with participants' issues and concerns.

Future Focus:

In 2005, the Board will summarize all survey comments and provide to Board members on a regular basis for information, in addition to using them for training sessions. Comments are kept anonymous; information and suggestions will be provided in a summary manner for Board members to view as feedback. The Board will also continue to look at ways of improving and streamlining its mediation program.

Strategy B: The Board will provide sound written decisions.

Performance Measure
Ensure correctness of Board decisions by monitoring judicial reviews, legal decisions, and statutory changes.

Target Met
Yes

Results
From April 1, 2004 to March 31, 2005, the Board issued 47 Decisions and Report and Recommendations, and of those, only 2 judicial reviews were brought before the Courts in relation to 3 of the Board's Decisions. The first judicial review was with respect to the Board's decision relating to Cardinal River Coals Ltd. receiving approval for the construction, operation, and reclamation of a private haul road near Cadomin, Alberta. The Board determined the appellant was directly affected by the road and was granted standing. The judicial review application, brought by Cardinal River Coals, asked the Courts to determine whether the Board erred in law when it determined the appellant was directly affected. The Court determined the Board was correct in its decision on standing and dismissed the judicial review.

The second judicial review was with respect to 2 Board decisions relating to approvals issued to ConocoPhillips Canada Resources Corp. and OPTI Canada Inc./Nexen Canada Ltd. for the construction, operation, and reclamation of an enhanced recovery in-situ oil sands projects in Fort McMurray, Alberta. The Board dismissed the appeals and denied reconsideration requests by the appellant, a First Nations group, because the Board determined the group did receive notice of and participated in a hearing before the Alberta Energy and Utilities Board of which all matters included in the Notices of Appeal were adequately dealt with. The First Nations group brought a judicial review application to request funding from the Courts in order to hire a lawyer to help "achieve their full aboriginal rights." The Court summarily dismissed the application against the Board.

The Board monitors judicial reviews, legal decisions, and statutory changes. In the case of an earlier judicial review issued in 2003 regarding a Lafarge Canada Inc. gravel pit, the Board conducted a substantive scientific inquiry instead of an initial jurisdictional legal inquiry with respect to the preliminary matter of standing, which resulted in the Court quashing the Board's decision. The Board now views the Court's decision in this matter as the leading case on standing.

Performance Measure
Stay updated on relevant law.

Target Met
Yes

Results
The Board stays updated on current topics and legal issues through reporting services and newspaper clippings related to regulatory matters. The Board also follows Supreme Court of Canada rulings through newspaper clippings and on-line notice services.

From April 1, 2004 to March 31, 2005, newspaper reports on the Supreme Court of Canada case of *Imperial Oil Ltd.* v. *Quebec (Department of Environmental Quality)*[2] allowed the Board to watch developments on "Polluter Pays" legislation. In this case, the Supreme Court of Canada determined the polluter pays principle is a valid concept in Canadian law. In the cases of *Paul* v. *British Columbia (Forest Appeals Commission)*[3] and *Nova Scotia (Workers' Compensation Board)* v. *Martin,*[4] the Supreme Court of Canada determined that administrative tribunals have the ability to deal with aboriginal rights and constitutional rights, respectively, within the context of a matter that is properly before them. Through newspaper clippings and reporting services, the Board was able to follow developments in these cases.

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[2] *Imperial Oil Ltd.* v. *Quebec (Minister of the Environment)*, [2003] 2 S.C.R. 624.
[3] *Paul* v. *British Columbia (Forest Appeals Commission)*, [2003] 2 S.C.R. 585.
[4] *Nova Scotia (Workers' Compensation Board)* v. *Martin*, [2003] 2 S.C.R. 504.

Staying current on important legal issues assists the Board in writing thorough decisions that take up-to-date issues into consideration. The Board keeps updated on relevant law by subscribing to and reviewing numerous national and international environmental and administrative publications such as the *Administrative Law Reports, Canadian Environmental Law Reports, Journal of Environmental Law and Practice*, the *Canadian Native Law Reporter*, and the *Stanford Environmental Law Journal*. Pertinent environmental matters are brought to light through reviewing publications such as *Enviroline*, *Environmental Dimensions*, and the Environmental Law Centre's *News Brief* which are circulated to Board staff.

Performance Measure

Ensure Board members receive decisions, reports, and updated legislation for review.

Target Met

Yes

Results

In order to keep Board members updated, all Board decisions are distributed as soon as they are issued. In past years, the Board has provided its members with binders including all decisions issued to date. However, due to the cost and volume of paper used in producing these binders, the Board decided in December 2004 to streamline its procedures and reduce costs by providing Board members with the decisions only. Board members can also view decisions on the Board's website at www.eab.gov.ab.ca. In addition to the decisions, Board members are also provided with summaries of all Board decisions to date through the *Environmental Appeals Board Practitioner's Manual*, which is published on a quarterly basis by the Legal Education Society of Alberta.

The Board provides its members with updated legislation when it becomes available.

Performance Measure

All decisions reviewed for legal accuracy by legal counsel.

Target Met

Yes

Results

From April 1, 2004 to March 31, 2005, the Board issued 47 Decisions and Report and Recommendations. All substantive decisions made by the Board were reviewed, from a legal perspective, by the Board's General Council and Settlement Officer.

Performance Measure

Encourage the use of plain language in its decisions.

Target Met

Yes

Results

The Board stresses the use of plain language in its decisions in order to allow its readers an opportunity to better understand complex legal or technical issues. For example, in the Board's decisions on Capstone Energy (03-116 & 03-118-121-R) and Cardinal River Coals Ltd. (03-150, 03-151 and 03-152-ID1), the Board explained technical terms that defined terms in more detail such as oilfield injection, non-saline water, and burden of proof.

The Board continually monitors its use of plain language in correspondence by revising its letters as appropriate. For example, in certain situations, the Board has removed paragraphs using the word "exhibits" and replaced it with "any supporting documents." This change was made to help participants better understand how to provide their information and make representations to the Board.

Decisions, once made by the Board members, are thoroughly reviewed by the Board's General Counsel and Settlement Officer, Senior Research Officer, Board Secretary, and Registrar of Appeals, who can make recommendations on improving the use of plain language.

Strategy C: The Board will provide a fair hearing process.

Performance Measure

Provide parties with a complete copy of the appeal file in accordance with the law.

Target Met

Yes

Results

Between April 1, 2004 and March 31, 2005, the Board received 124 appeals. Participants were copied on all correspondence from the date the appeal was filed. The Board promotes fairness by providing participants to an appeal with identical information, with the exception of some information provided during mediations. In order to preserve confidentiality in mediation, some participant information is allowed to remain confidential and is discussed only with the mediator in private discussions.

In order to advance appeals quickly, the Board requests background records regarding the appeal from Alberta Environment to be provided to the Board within two weeks of opening a new appeal file. Once Alberta Environment's record is received, the Board sends a copy to the participants normally within five days, depending on the size of the file.

In late 2004, the Board implemented an electronic document management system called Power Press. This system is intended to streamline the Board's processes, help to avoid duplication, and assist the Board in conducting its work in a more effective and efficient manner. The Board must produce large quantities of documents and is required to provide copies to all participants within tight timelines in accordance with the principles of administrative law. Power Press allows the Board to convert appeal files from paper to electronic format, which results in having a duplicate image of the Board's master file in electronic form. This makes providing copies of each appeal to participants easier and more efficient. Power Press also incorporates on-site colour printing, which allows the Board to reproduce colour documents. This results in an exact copy of the file being produced for all participants. In the past, colour reproduction needed to be outsourced, which took additional time and was a significant cost to the Board.

The Board tries to accommodate all requests it receives for information from participants, the general public, and the media. In matters where there is a significant interest by the public in a hearing or preliminary meeting, the Board provides information packages on an appeal. These packages provide a clear and concise summary of the appeal.

When a hearing is set, the Board's regulations dictate that a copy of the Board's file must be available to the public for viewing. It is the Board's practice to send a copy of its file to a library located near where the appeal originated or in the vicinity of the project. This allows participants and the general public an opportunity to view the appeal file without having to travel to the Board's office in Edmonton. From April 1, 2004 to March 31, 2005, the Board sent out 5 viewing packages to libraries around Alberta.[5]

From April 1, 2004 to March 31, 2005, the Board issued 13 Report and Recommendations. Seven of these Report and Recommendations were in relation to 7 hearings and 6 were issued in relation to mediations. While this number may appear low in comparison to the 124 appeals the Board received, it is important to remember that the Board resolves most of its appeals through mediation, not all of which require a Report and Recommendation.

Future Focus

In the future, the Board plans to use Power Press to provide participants with an option of receiving an electronic version of the appeal file in addition to a paper version. It is the Board's hope to set up an electronic viewing area in its office, which would allow individuals to view and search electronic versions of appeal files. Ultimately, the Board would like to post a copy of all active appeal files to its website, and hence would be available to the public.

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[5] From April 1, 2005 to March 31, 2005, the Board issued 7 Reports and Recommendations with respect to 7 hearings. However, 2 of the 7 hearings were held in the 2003 to 2004 reporting year. Since 5 hearings were held this reporting year, only 5 viewing packages were sent to libraries around Alberta.

Performance Measure

Provide parties an opportunity to present input prior to the Board making its final decision.

Target Met

Yes

Results

The Board provides an opportunity for participants to provide input, through either oral or written submission processes, before the Board makes its final decision. Participants also have input in scheduling dates for mediation, preliminary meetings, or hearings. Some examples of participants providing input from April 1, 2004 to March 31, 2005 are provided below.

In the Board's decision regarding Ducks Unlimited Canada (04-001 and 04-002-R), the appeal was filed outside the 7-day filing period. The Board requested the participants produce written submissions in response to a request for an extension of time to file an appeal. As a result of the information received stating Alberta Environment advised the appellant that he had 30 days to file an appeal, the 7-day period was extended.

In the Board's decision regarding Cardinal River Coals Ltd. (04-053), the appellant filed an appeal past the 7-day legislated time frame. Although the Board determined the appellant did not present special circumstances as to why an extension should be granted, and dismissed the appeal and reconsideration request, the Board provided many opportunities to present reasons for the late-filed appeal. The Board also granted extensions to participants on the file and provided additional time to allow the appellant to submit written submissions due to extenuating circumstances. To increase efficiency, the Board usually requests participants provide written submissions pertaining to multiple issues at the same time; however, in this case the Board chose to allow the appellant an opportunity to submit written submissions with respect to 2 issues separately.

In the Board's decisions regarding ConocoPhillips Canada Resources Corp. and OPTI Canada Inc./Nexen Canada Ltd. (03-147 and 03-148), the Board received 2 Notices of Appeals regarding 2 approval holders from the same appellant, a First Nations group. Throughout the Board's appeal and reconsideration process, the participants were provided many opportunities to provide input. The Board also granted extensions to the appellant to provide submissions.

The Board also takes into consideration participants' circumstances when setting its deadlines for its submission process. For example, circumstances such as location, access to a computer or fax machine, or the time it may take to deliver information to a distant or remote location are taken into account.

Performance Measure

In accordance with the law, Board hearings and preliminary meetings will be open to the public for viewing only, and appeal files will be made available to the public for viewing.

Target Met

Yes

Results

The Board encourages public awareness and involvement in its appeals by making hearings and preliminary meetings open to the public for viewing, in accordance with the principles of administrative law. The Board tries to inform as many people as possible when a hearing will occur by placing advertisements in local papers in the area of the project under appeal or in the area where the appeal originated. In the case of Lafarge Canada Inc. (04-009, 011 and 012), the Board published hearing advertisements in newspapers in Morinville, Spruce Grove, Stony Plain, and Lac Ste. Anne. In addition to newspaper advertisements, the Board publishes its hearing advertisements as news releases on the Government of Alberta website under news at www.gov.ab.ca. These news releases are also distributed to 95 daily newspapers, radio stations, and television stations within Alberta. Advertisements advise the public that any person, other than the participants, can make an application in writing to the Board requesting permission to make presentations at the hearing.

Complete copies of all active appeal files are available for viewing at the Board's office in Edmonton.

In preparation for a hearing, the Board distributes a copy of its file to a library located in the area where the appeal originated or in the vicinity of the project under appeal. This allows participants and the general public an opportunity to view the appeal file without having to travel to the Board's office in Edmonton. From April 1, 2004 to March 31, 2005, the Board sent out 5 viewing packages to libraries around Alberta.

In matters where there is a significant interest by the public in a hearing or preliminary meeting, the Board provides information packages on the appeal. These packages provide a clear and concise summary of the appeal and its history.

In this reporting year, the Board held 5 hearings. This number may seem low in comparison to the 124 appeals filed; however, it must be remembered that mediation is the Board's preferred way of resolving appeals. Three of the hearings were high-profile cases, including a boat launch in the Town of Canmore, a sand and gravel pit approval for Lafarge Canada Inc., and the construction, operation, and reclamation of a private haul road by Cardinal River Coals Ltd. In these three cases there was significant interest by the public and a need for the public to view these proceedings. The Board welcomed this interest and accommodated the large audiences by selecting suitable venues with sufficient seating.

Future Focus

The Board plans to scan and archive its closed appeal files in an electronic format using Power Press. Compact disks would then be available for the pubic to view all appeal files to date, print documents on demand, or allow staff to email sections of files as requested. Ultimately, the Board hopes to post a copy of all active appeal files on its website, so they will be available to the public over the Internet.

Performance Measure

Carry out Board hearings in accordance with the principles of natural justice and procedural fairness.

Target Met

Yes

Results

The Board adheres to the principles of natural justice and procedural fairness by providing participants a fair opportunity to respond to matters that are before the Board, as well as provide input before the Board makes its final decision. The Board also ensures that participants to an appeal have a complete copy of the appeal file, including a copy of the record in relation to the appeal from Alberta Environment.

In matters where there is a significant interest by the public in a hearing or preliminary meeting, the Board also provides information packages on the appeal. These packages provide a summary of the appeal and its history. Hearings and preliminary meetings are open to the public for viewing and a complete copy of the Board's file is available to the public to promote openness, transparency, and public awareness.

Performance Measure

Prepare decisions and reports with legislative time frames in a timely manner.

Target Met

Yes

Results

From April 1, 2004 to March 31, 2005, the Board issued 66 written decisions including 34 Decisions, 13 Report and Recommendations, and 19 Discontinuance of Proceedings. Six of the Report and Recommendations related to mediations and 7 related to 7 hearings. Of those 7 hearings, the Board requested 2 extensions for the preparation of the Report and Recommendations. The first extension was requested on the Lafarge Canada Inc. (04-009, 04-011-012) appeals due to the large number of issues and the complexity of the arguments presented. Before requesting the extension, the Board spoke to the participants and they expressed no concerns. Alberta Environment requested the second extension on the New Dale Hutterian Brethren (03-010) appeal. This request was made because of a complex constitutional motion brought by the Siksika First Nation that resulted in negotiations between the Government of Alberta and the Siksika First Nation. The extension permitted the Government of Alberta and the Siksika First Nation to reach an agreement, which resulted in the withdrawal of the constitutional motion.

The Board is mindful of its legislative time frames and tries, under all circumstances, to prepare its decisions within those time frames. The Board is also in a position where it cannot anticipate the complexity of the appeals it hears, and under extenuating circumstances may need to request an extension.

Future Focus

The Board will continue to prepare its decisions in a timely manner that takes into consideration its legislative time frames.

Strategy D: The Board will strive to continually improve the way it conducts its hearings.

Performance Measure

Monitor feedback by parties and public on a continual basis.

Target Met

Yes

Results

The Board receives feedback through newspaper clippings, in person at Board hearings and preliminary meetings, via its website, through the Board's mediation surveys, and directly through telephone calls and correspondence. By being attentive at hearings and preliminary meetings, answering questions and concerns raised by members of the public and media, and using feedback to revise Board procedures, the Board considers all input as valuable and uses it to improve the Board's processes.

During this report period, the Environmental Law Centre ("ELC") has been working on a project to assess the accessibility to the environmental regulatory process in Alberta. The ELC reviewed the Board's decisions and practices, and initial project findings revealed areas where improvements could be made and where individuals and groups have experienced difficulties in accessing the Board's processes. The concerns centre around standing, procedure, and costs. Specifically, the results indicated "standing is a problematic area that is not well understood by appellants" and some participants found the Board's processes to be "overly legalistic." Stakeholders also noted "there is limited public awareness and understanding of the EAB's role and its process" and participants have a "lack of certainty and predictability with respect to costs."[6] As of March 31, 2005, the ELC project was nearing completion; however, final results have not been published. The Board has reviewed the preliminary findings. Regarding the comment that some of the Board's procedures were too legalistic, the Board amended a number of letters making them easier to understand.

The Board has also received feedback advising that participants sometimes feel overwhelmed by the amount of work needed to process an appeal. The Board's letters have been amended to encourage all participants to contact Board staff for assistance and clarification as needed. Board staff make themselves available to respond to telephone calls and meet with participants who are having difficulty or need questions answered. In order to be of assistance, Board staff have often made themselves available outside regular business hours.

Future Focus

Currently the Board sends out surveys at the conclusion of each mediation. In 2005, the Board is planning to create a participant survey that will be sent out at the conclusion of each appeal. The goal of the survey will be to receive feedback from all participants regarding their satisfaction with the Board's procedures and processes from initial to final contact. Through this survey, participants will be able to provide specific feedback that the Board can use to improve the way it conducts its business.

Upon receiving the final version of the ELC's report, the Board plans to review the findings and consider ways within the law to improve the Board's processes as needed.

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[6] Environmental Law Centre, "ELC Assessment of EAB Accessibility Nears Completion" *News Brief* Vol. 19 No. 4 (2004) at page 8.

Performance Measure
Conduct stakeholder consultations as appropriate.

Target Met
Yes

Results
From April 1, 2004 to March 31, 2005, the Board decided not to conduct a formal stakeholder consultation due to the ELC's project to assess the accessibility of the environmental regulatory process in Alberta. The ELC reviewed the Board's decisions and practices and also interviewed a number of individuals who have appeared before the Board. Initial project findings revealed areas where improvements could be made and where individuals and groups have experienced difficulties in accessing the Board's processes. Concerns identified centre around standing, procedure, and costs. Specifically, the results indicated "standing is a problematic area that is not well understood by appellants" and some participants found the Board's processes to be "overly legalistic." Stakeholders also noted "there is limited public awareness and understanding of the EAB's role and its process" and participants have a "lack of certainty and predictability with respect to costs." [7] As of March 31, 2005, the ELC project was nearing completion; however, final results have not been published. Upon receiving the preliminary findings, the Board responded by drafting information sheets to send out to participants with respect to standing and costs. Regarding the comment that some of the Board's procedures were too legalistic, the Board amended a number of letters making them easier to understand. The Board is appreciative of the work done by the ELC and always welcomes feedback from stakeholders.

Future Focus
Upon receiving the final version of the Environmental Law Centre's report, the Board plans to review the findings and consider ways within the law to improve the Board's processes as needed.

Goal 2: PROCESS: Effective and efficient resolution of all matters before the Board.

Strategy A: The Board will use mediation where appropriate.

Performance Measure
Monitor number of appeals successfully resolved through mediation as compared to the Environmental Appeals Board historical average of greater than 70 percent.

Target Met
Yes – 100 percent success rate of appeals referred to mediation this reporting year.

Results
From April 1, 2004 to March 31, 2005, the Board held 18 mediations in relation to 42 appeals and all were successfully resolved. Of these 18 mediations, the Board issued 17 Discontinuance of Proceedings, Reports and Recommendations, and Decisions. [8]

The Board encourages the resolution of appeals, either through mediation or informal discussions before mediation takes place. The Board provides assistance at any time through the appeal process to help resolve matters. An example of this is the Hutterian Brethren of New Muehl appeal (04-051). Within days of the Notice of Appeal being filed, the Board's General Counsel and Settlement Officer met with representatives from the Hutterian Brethren Colony to discuss the

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[7] Environmental Law Centre, "ELC Assessment of EAB Accessibility Nears Completion" *News Brief* Vol. 19 No. 4 (2004) at page 8.
[8] Two of the mediations conducted by the Board were held jointly, resulting in the issuance of one common decision. The 2 mediations dealt with 2 administrative penalties issued to 2 different approval holders for the same project. (See: ***Laebon Developments Ltd. and WNM Engineering Ltd.*** v. ***Director, Central Region, Regional Services, Alberta Environment*** (3 November 2004), Appeal Nos. 04-043, 04-044, 04-045 and 04-046-D (A.E.A.B.).)

appeal and clarify their concerns. After informal discussions, it was determined there was a misunderstanding between the participants. Board staff assisted in promoting effective communication between the colony and Alberta Environment, which resulted in the appeal being withdrawn.

Performance Measure
Post information related to the mediation process to the Board's website.

Target Met
Yes

Results
The Board posted a number of publications to its website including its 10 Year Anniversary Report and Rules of Practice, which includes information on mediation.

Future Focus
The Board is currently working on creating a section specifically devoted to mediation for its website. The section will include information describing Board mediations, when mediation is and is not appropriate, a frequently asked questions section, pictures of its mediation facilities located at its office in Edmonton, and current Internet links on mediation. The Board will post publications specifically related to mediation and administrative tribunals such as *Amicable Dispute Resolution: The Mediation Alternative and the Alberta Environmental Appeal Board* and *Using Mediation in Canadian Environmental Tribunals: Opportunities and Best Practices.* The Board is also looking at implementing a video component to its website, including demonstrations explaining the mediation process. Through the posting of such information, the Board hopes to further promote mediation by providing the public with current material on alternative dispute resolution.

Performance Measure
Conduct satisfaction surveys at the conclusion of each mediation.

Target Met
Yes

Results
Over the past year, the Board sent out 119 mediation surveys and received 66 responses.

The Board distributes satisfaction surveys at the conclusion of each mediation. Participants are asked to complete questions that assess their level of satisfaction regarding their experience with the Board's mediation program. The results of the surveys are kept anonymous. Finding out what participants liked, disliked, and what could be improved in our mediations, helps the Board make changes and streamline its mediation program. The Board also uses this feedback when conducting Board member training sessions where staff and members discuss new ways to deal with participants' issues and concerns, or to formulate role-plays for problem-solving exercises.

Future Focus:
In 2005, the Board will start summarizing all survey comments and provide them to Board members on a regular basis, in addition to using them for training sessions. Comments are kept anonymous; information and suggestions will be provided in a summary manner for Board members to view as feedback. The Board will also continue to look at ways of improving and streamlining its mediation program.

Performance Measure
Encourage parties to participate in mediation.

Target Met
Yes

Results
Board staff encourage participants to use mediation whenever possible by providing information on mediation in the initial correspondence when an appeal file is opened and later in the process as appropriate. This information lets all participants know what to expect in mediation. The Board has found that participants who do not have prior involvement in mediation find it helpful when staff or the mediator are available to answer questions or concerns about the mediation process. Mediations are often held in different locations around Alberta. Where possible, participants are welcome to view mediation facilities beforehand, as well as visit the Board's facilities in Edmonton.

Future Focus
In order to make information on mediation more accessible and encourage the use of this process, the Board is working on creating a section specifically devoted to mediation on its website. The section will include information describing Board mediations, when mediation is and is not appropriate, a frequently asked questions section, pictures of its mediation facilities located at its office in Edmonton, and links to websites on mediation. The Board will also post publications specifically related to mediation and administrative tribunals such as *Amicable Dispute Resolution: The Mediation Alternative and the Alberta Environmental Appeal Board* and *Using Mediation in Canadian Environmental Tribunals: Opportunities and Best Practices*. The Board is also looking at implementing a video component to its website, including demonstrations explaining the mediation process.

Strategy B: The Board will strive to continually improve the way it conducts its business.

Performance Measure
Where a problem occurs, staff will meet to develop a solution and apply it to the particular situation and to Board processes generally where appropriate and necessary. Where necessary, staff will consult and seek approval from the Board.

Target Met
Yes

Results
The majority of problems the Board responds to are the result of feedback received from participants who have appeals before the Board. Senior staff meet regularly to discuss active appeals and how to address this feedback.

For example, when the Board was advised that some of their procedures were too legalistic, it amended a number of letters making them easier to understand. Keeping in mind the Board's goal to write letters and decisions in plain language, it also writes correspondence with its specific audience in mind.

The Board has also received feedback advising that participants sometimes feel overwhelmed by the amount of work needed to process an appeal. The Board's letters have been amended to encourage participants to contact Board staff for assistance and clarification as needed. Board staff make themselves available, including after regular business hours, to respond to telephone calls and meet with participants who are having difficulty or need questions answered.

Future Focus
Currently the Board sends out surveys at the conclusion of each mediation. In 2005, the Board is planning to create a participant survey which will be sent out at the conclusion of each appeal. The goal of the survey will be to receive feedback from all participants regarding their satisfaction with the Board's procedures and processes from initial to final contact. Through the survey, participants will be able to provide specific feedback the Board can use to improve the way it conducts its business.

Performance Measure
Staff will meet regularly to review its appeal processes and identify opportunities for improvement. Where necessary, staff will consult and seek approval from the Board.

Target Met
Yes

Results
Staff meet regularly to discuss active appeals and issues that are currently before the Board. Solutions are "brainstormed" and implemented as required.

In 2005, the Board received approval from the Chair to proceed with ISO 9001:2000 certification. Achieving certification under this quality management system will help the Board evaluate how it conducts its business and assist the Board in making improvements in its performance. In March 2005, the Board began its introductory phase of ISO, which included staff working together to identify existing Board procedures. The Board plans to receive ISO 9001:2000 certification before the end of the next reporting year.

Performance Measure
Monitor feedback by parties and public on a continual basis.

Target Met
Yes

Results
When the Board was advised that some of its procedures were too legalistic, it amended a number of letters making them easier to understand. Keeping in mind the Board's goal to write letters and decisions in plain language, it also writes correspondence with its specific audience in mind.

The Board has received feedback from participants advising they sometimes feel overwhelmed by the amount of work needed to process an appeal. The Board's letters have been amended to encourage participants to contact Board staff for assistance and clarification as needed. Board staff make themselves available, including after regular business hours, to respond to telephone calls and meet with participants who are having difficulty or need questions answered.

Future Focus
Currently the Board sends out surveys at the conclusion of each mediation. In 2005, the Board is planning to create a participant survey which will be sent out at the conclusion of each appeal. The goal of the survey will be to receive feedback from all participants regarding their satisfaction with the Board's procedures and processes from initial to final contact. Through this survey, participants will be able to provide specific feedback which the Board can use to improve the way it conducts its business.

Performance Measure
Conduct stakeholder consultations as appropriate.

Target Met
Yes

Results
From April 1, 2004 to March 31, 2005, the Board decided not to conduct a stakeholder consultation due to the ELC's project to assess the accessibility to the environmental regulatory process in Alberta. The ELC reviewed the Board's decisions and practices and also interviewed a number of individuals who have appeared before the Board. Initial project findings revealed areas where improvements could be made and where individuals and groups have experienced difficulties in accessing the Board's processes. The concerns centre around standing, procedure, and costs. Specifically, the results indicated "standing is a problematic area that is not well understood by appellants" and some participants found the Board's processes to be "overly legalistic". Stakeholders also noted "there is limited public awareness and understanding of the EAB's role and process" and participants have a "lack of certainty and predictability with respect to

costs."[9] As of March 31, 2005, the ELC project was nearing completion; however, final results have not been published. Upon receiving the preliminary findings, the Board responded by drafting information sheets to send out to participants with respect to standing and costs. Regarding the comment that some of the Board's procedures were too legalistic, the Board amended a number of letters making them easier to understand. The Board is appreciative of the work done by the ELC and always welcomes feedback from stakeholders.

Future Focus

Upon receiving the final version of the ELC's report, the Board plans to review the findings and consider ways within the law to improve the Board's processes as needed.

Strategy C: *The Board will work to streamline its procedures.*

Performance Measure

Consolidate appeals where appropriate.

Target Met

Yes

Results

From April 1, 2004 to March 31, 2005, the Board received 124 appeals that were consolidated into 51 appeal matters.

The Board consolidates appeals in order to streamline its procedures, save time, and resolve matters in an expedient, efficient, and cost-effective manner.

The Board combines its appeals under three categories: 1. same approval, different appellants, such as Ducks Unlimited Canada (04-001 and 04-002-R), Paragon Pork Management Ltd. (04-021, 022, 023, 025 and 031-DOP), and Jaydel Farms Ltd. (04-006-04-007); 2. same appellants, different approval, such as Slave River Exploration Ltd. (04-048 and 04-049-D), Talisman Energy Inc. (04-041 and 04-042-DOP), and View Mont Estates Ltd. (04-032 and 04-033-DOP); and 3. same facility, different approvals, such as Yellowhead Aggregates and Lafarge Canada Inc. (04-024, 04-026-030 and 04-035-040-DOP).

In the Board's decisions regarding ConocoPhillips Canada Resources Corp. and OPTI Canada Inc./Nexen Canada Inc. (03-147 and 03-148), it decided to process these appeals at the same time, because the same appellant was appealing approvals given to different companies working on similar projects.

By combining appeals under these three categories, the Board is able to save time and money in processing multiple appeals, hold multi-party mediations, and be environmentally conscious in using less paper.

Performance Measure

Use written versus oral submission processes for matters where appropriate.

Target Met

Yes

Results

From April 1, 2004 to March 31, 2005, the Board issued 40 Decisions and Reports and Recommendations in relation to 28 written preliminary meetings, 5 oral preliminary meetings, and 7 oral hearings.

In order to streamline its procedures, the Board processes the majority of its appeals through written versus oral submissions. The Board considers written submissions effective and efficient because it allows the Board to deal with issues quickly and avoid the time delays and scheduling problems associated with oral proceedings. Written submission processes benefit participants in that they have more time to provide a considered response to a matter, they do not have

[9] Environmental Law Centre, "ELC Assessment of EAB Accessibility Nears Completion" *News Brief* Vol. 19 No. 4 (2004) at page 8.

to take time off work, and they do not have to travel to a venue for an oral submission process. However, in complicated cases where evidence is needed, the Board will request or grant an oral preliminary meeting. In cases where a matter is appropriate for a hearing, the Board will usually schedule an oral submission process. However, if the issues under consideration in a hearing are strictly a matter of law, the Board may grant a written hearing.

Performance Measure
Prepare decisions and reports within legislated time frames.

Target Met
Yes – 90 percent of decisions and reports completed in legislated time frames.

Results
From April 1, 2004 to March 31, 2005, the Board issued 66 written decisions including 34 Decisions, 13 Report and Recommendations, and 19 Discontinuance of Proceedings. Six of the Report and Recommendations related to mediations and 7 related to 7 hearings. Of those 7 hearings, the Board requested 2 extensions for the preparation of the Report and Recommendations. The first extension was requested on the Lafarge Canada Inc. (04-009, 04-011-012) appeals due to the large number of issues and the complexity of the arguments presented. Before requesting the extension, the Board spoke to the participants and they expressed no concerns. The second extension was requested by Alberta Environment on the New Dale Hutterian Brethren (03-010) appeal. This request was made because of a complex constitutional motion brought by the Siksika First Nation that resulted in negotiations between the Government of Alberta and the Siksika First Nation. The extension permitted the Government of Alberta and the Siksika First Nation to reach an agreement, which resulted in the withdrawal of the constitutional motion.

In order to streamline its processes, meet short timelines, and process appeals within legislated time frames, the Board revised advertisements for hearings and news releases in 2004-2005. Advertisements now state that intervenor requests can be faxed or emailed. This change was implemented because past intervenor requests sent via mail were received by the Board after the deadline. In some instances, the Board sends out letters to the participants indicating the decision that has been made with respect to a particular matter with reasons to follow, thereby allowing the appeal process to continue while the decision is being prepared.

The Board is mindful of its legislative time frames and tries, under all circumstances, to prepare its decisions within those time frames. The Board is also in a position where it cannot anticipate the complexity of the appeals it hears, and under extenuating circumstances, it may need to request an extension.

Future Focus
The Board will continue to prepare its decisions in a timely manner that takes into consideration its legislative time frames.

Strategy D: The Board will provide information regarding its processes.

Performance Measure
Send information packages with respect to new appeals within 3 working days.

Target Met
Yes

Results
From April 1, 2004 to March 31, 2005, the Board received 124 appeals. Information packages were sent out within three working days of receiving each of these Notices of Appeal 100 percent of the time. The Board's ability to send information out within this time frame is dependant on proper contact information being provided.

Performance Measure
Staff will respond to requests from public and parties regarding the Board's processes in a timely manner.

Target Met
Yes

Results
The Board tries to respond to all requests for information within the same working day; however, if a detailed or complex response is required, a few days may be required to organize and compile the information.

Board staff regularly provide information to participants that have appeals before the Board. In such cases, the Board responds to participants immediately, and if a written response is necessary, a copy of the response is also sent to the other participants involved in the appeal to comply with the principles of natural justice.

Staff address media inquiries, and respond to requests for information from participants, and the general public. In situations where there is a significant interest by the public in a hearing or preliminary meeting, the Board provides information packages on the file and the order of proceedings for those attending. These packages provide a clear and concise summary of the appeal and its history.

The Board also responds to individuals wanting to file an appeal. These requests are received by e-mail, fax, mail, or telephone and are responded to within one working day.

Performance Measure
Ensure parties to an appeal receive copies of correspondence, decisions, and reports.

Target Met
Yes

Results
Between April 1, 2004 and March 31, 2005, the Board received 124 appeals. On all appeals, the participants received copies of correspondence from the date the appeal was filed. The Board promotes fairness by providing all participants on the same appeal with identical information, with the exception of some information provided during mediations. In order to preserve confidentiality in mediation, some participant information is allowed to remain confidential and is discussed only with the mediator in private discussions.

In order to advance appeals quickly, the Board requests background records regarding the appeal from Alberta Environment be provided to the Board within two weeks of opening a new file. Once Alberta Environment's record is received, the Board sends a copy of it to the participants normally within five days, depending on the size of the file.

Once the Board issues its decisions or reports, they are immediately distributed to the participants. The Board also forwards its decisions and reports to a number of distribution lists and media as requested.

In late 2004, the Board implemented an electronic document management system called Power Press. This system is intended to streamline the Board's processes, help to avoid duplication of work, and assist the Board in conducting its work in a more effective and efficient manner. The Board must produce large quantities of documents and is required to provide copies to all participants within tight timelines in accordance with the principles of administrative law. Power Press allows the Board to convert appeal files from paper to electronic format, which results in having a duplicate image of the Board's master file in electronic form. This makes providing copies of each appeal to participants easier and more efficient. Power Press also incorporates on-site colour printing, which allows the Board to reproduce colour documents. This results in an exact copy of the file being produced for all participants. In the past, colour reproductions needed to be outsourced by the Board, which took additional time and was a significant cost.

The Board tries to accommodate all requests it receives for information from participants, the general public, and the media. In situations where there is a significant interest by the public in a hearing or preliminary meeting, the Board provides information packages on the file and the order of proceedings for those attending. These packages provide a clear and concise summary of the appeal and its history.

It is the Board's practice to send a copy of its file to the library near where the appeal originated or in the vicinity of the project. This allows participants and the general public an opportunity to view the appeal file without having to travel to

the Board's office in Edmonton. From April 1, 2004 to March 31, 2005, the Board sent out 5 viewing packages to libraries around Alberta.

Future Focus

In the future, the Board plans to use Power Press to provide participants with the option of receiving an electronic version of their appeal in addition to a paper version. The Board would like to set up an electronic viewing area in its office, which would allow individuals to view and search electronic versions of appeal files. The Board is also looking at the possibility of posting copies of all active appeal files on its website, so they will be available to the public over the Internet.

Strategy E: The Board will seek opportunities for innovation.

Performance Measure

Examine new technologies as the Board becomes aware of them.

Target Met

Yes

Results

The Board uses voice dictation software to dictate instructions after a multi-day hearing. This streamlines the Board's processes by producing both verbal and written instructions. This information can then be immediately sent to appropriate staff for execution. Staff use this software to elaborate on instructions given by the Chair or dictate information to be used in decisions.

In late 2004, the Board implemented an innovative electronic document management system called Power Press. This system is intended to streamline the Board's processes, help to avoid duplication, and assist the Board in conducting its work in a more effective and efficient manner. Power Press allows the Board to convert appeal files from paper to electronic format, which results in having a duplicate image of the Board's master file in electronic form. This makes providing copies of each appeal to participants easier and more efficient. Power Press also incorporates on-site colour printing, which previously needed to be outsourced by the Board, which took additional time and was a significant cost.

In March 2005, the Board launched a new website to incorporate technology such as filing electronic Notices of Appeal.

The Board's state-of-the-art visual presentation system for its hearing room is now fully functional. The addition of two LCD projectors and a document camera for overhead projections provides participants appearing before the Board with advanced equipment to efficiently carry out their presentations. The addition of individual monitors for Board members and a large viewing screen for the gallery allows presentations to be easily viewed by all in attendance.

Future Focus

In 2005, the Board plans to research digital transcription for its hearings. Digital transcription would provide the public with on-line access to hearing transcripts. Transcript repositories could be accessed 24 hours a day, 365 days a year, where the transcripts could be viewed, searched, and downloaded in an e-transcript format.

The Board is also researching digital audio recording equipment to make electronic copies of its oral proceedings. These proceedings would be copied on compact disks and distributed to anyone interested. Electronic recordings of oral proceedings could also be accessed through the Board's website.

The Board plans to scan and archive its closed appeal files. Compact disks would then be available for the public to view all appeal files to date, print documents on demand, or allow staff to email sections of files where needed.

The Board is also looking at the possibility of posting copies of its active appeal files on its website, so they will be available to the public on the Board's website. This would contribute to the openness and transparency of the Board's processes.

Performance Measure
Keep in contact with other agencies, tribunals, and organizations on new ways to conduct Board business.

Target Met
Yes

Results
Dr. Frederick Fisher, Q.C., as Chair of the Board, and a Board staff member attended the Canadian Council of Administrative Tribunals (CCAT) International Conference in Toronto from June 20 to 23, 2004. CCAT is a national organization dedicated to supporting the work of administrative tribunals and promoting excellence in administrative justice. The conference was an opportunity to share the work of the Board, as well as learn what international communities, governments, and organizations are doing to promote better administration of justice.

In September 2004, a Board staff member attended a conference on setting performance measures for provincial and municipal governments. Contact was made with various Government of Alberta departments, agencies, and boards and learned what other organizations are using to assist in business planning and reporting.

In January 2005, a Board staff member attended a symposium on Facility Emergency Response Planning and made contact with various government departments and agencies. Contact was also made with staff from the Alberta Energy and Utilities Board regarding their in-house emergency response plan.

Board members and Board staff made presentations to a variety of organizations such as the Alberta Aboriginal Lands Association, the Municipal Government Board, the Canadian Bar Association, the University of Alberta and the University of Calgary, the Canadian Institute, the Environmental Law Centre, and the Provincial Alternative Dispute Resolution Network Conference, hosted by Alberta Municipal Affairs (See: Appendix C for a listing of the Board's presentations during this reporting period.)

The Board provided its hearing room facilities to the Municipal Government Board to conduct their hearings.

The Board provided copyright permission to the Canadian Bar Association – Continuing Legal Education Department and the Association of Professional Engineers, Geologists and Geophysists of Alberta to publish an extract of the Board's Report and Recommendations regarding Capstone Energy Ltd.

The Chair presented a paper at the Canadian Bar Association National Conference in Winnipeg, Manitoba, in August 2004.

Future Focus
Continued contact with other agencies, tribunals, and organizations is important in keeping the Board informed of new ideas while sharing information about Board practices.

In late 2005, the Board plans to co-host the 17th Annual Environmental Lawyers in Government Conference with Alberta Justice, Special Prosecutions, and Alberta Justice, Environmental Law Section. The three-day conference will be an opportunity for provincial and federal lawyers to network and exchange ideas and experiences. The focus of the conference is to provide a forum to share ideas on environmental law that promote environmental protection initiatives across Canada.

Goal 3: COMMUNITY: Sharing ideas and exchanging information.

Strategy A: The Board will provide public presentations and training.

Performance Measure
Respond to all reasonable requests from the community, government, or business, to make presentations.

Target Met
Yes

Results
From April 1, 2004 to March 31, 2005, the Board was asked to make 25 presentations in response to various requests. The Board made all 25 presentations which were conducted by the Board's Chair, Board members, or Board staff. The subject matter of presentations varied from alternative dispute resolution related topics, administrative law, practicing before administrative tribunals, advocacy before tribunals, to aboriginal issues and their affect on administrative boards. (Please see Appendix C for a complete list of the Board's presentations during this reporting year).

Performance Measure
Provide opportunities for the public to participate in Board sponsored alternative dispute resolution initiatives.

Target Met
Yes

Results
In October 2004, the Board held its third alternative dispute resolution conference/training session entitled "Forging Partnerships between Federal/Provincial Governments and Members of First Nations." The conference/training sessions were conducted by Dr. Lawrence Susskind and Mr. Patrick Field of CBI, and were held over two days. The conference/training session included a number of presentations and simulations explaining interest-based negotiations in general and with respect to First Nations. The conference demonstrates the Board's ongoing commitment to share information and demonstrate ways for groups to work together by using positive and collaborative initiatives in dealing with conflict.

Future Focus
Sharing information in an educational setting that draws on the principles of interest-based alternative dispute resolution is an initiative the Board considers important. The Board hopes to expand its existing conference to include a more multi-disciplinary, cross-ministry approach.

Strategy B: The Board will provide information on the Board to the public.

Performance Measure
Maintain and update the Board's website on a regular basis.

Target Met
Yes

Results
In March 2005, the Board relaunched its website with a fresh look and new information. Since this relaunch, the Board has received many positive comments from our stakeholders. Individuals can now file electronic Notices of Appeal, view recent news releases, and have access to all decisions the Board has issued. The Board's new publications section allows users to download the Board's annual reports, business plans, and 10 Year Anniversary Report. The Board has also included its judicial reviews with corresponding Board decisions for quick reference. Over the period of 2004 to 2005, the Board updated its website on a regular basis to ensure all information was relevant and up-to-date.

Future Focus
In the next reporting year, the Board plans to make additions to its website by including summaries for all of its decisions issued to date. For convenience, the summaries will provide a brief overview of each Board decision.

The Board is also working on creating a section for its website specifically devoted to mediation. The section will include information describing Board mediations, when mediation is and is not appropriate, a frequently asked questions section, pictures of its mediation facilities at its office in Edmonton, and helpful mediation Internet links. The Board plans to

post publications specifically related to mediation and administrative tribunals such as *Amicable Dispute Resolution: The Mediation Alternative and the Alberta Environmental Appeal Board* and *Using Mediation in Canadian Environmental Tribunals: Opportunities and Best Practices.* The Board is also looking at implementing a video component to its website, including demonstrations explaining the mediation process.

Performance Measure
Distribute decisions and reports to legal publications/organizations/ libraries, and others by request.

Target Met
Yes

Results
From April 1, 2004 to March 31, 2005, the Board issued 66 written decisions including 34 Decisions, 13 Report and Recommendations, and 19 Discontinuance of Proceedings which were distributed to participants involved in the appeals, to various distribution lists, and to the media upon request.

Decisions are submitted to various legal publications to be considered for publication. As of March 31, 2005, 74 of the Board's decisions have been reported in the *Canadian Environmental Law Reports.* The Board's decisions have also been published in the *Administrative Law Reports* and the *Alberta Law Reports.* Decisions have been the subject of scholarly analysis in law journals and have been widely reported in other legal and environmental publications. Selection of the Board's hearing decisions in these reports is a reflection of the importance and quality of Board decisions. Many of the Board's decisions are also reported in the media, such as newspapers and television.

The Board submits all of its publications and provides a bound version of its decisions on a yearly basis to the Government of Alberta Depository Library Program. The program ensures publications are distributed to provincial and federal libraries, and also to the United States Library of Congress.

Performance Measure
Print public notices regarding Board hearings and preliminary meetings in local papers as appropriate.

Target Met
Yes

Results
Between April 1, 2004 and March 31, 2005, the Board held 5 hearings and 2 oral preliminary meetings and placed advertisements in local papers as required. In considering the number of hearings and preliminary meetings compared to the 124 appeals filed this reporting year, it must be remembered that mediation is the Board's preferred way to resolve appeals, and the Board usually uses written submission processes for preliminary matters. In the event of an adjournment or cancellation of a hearing, the Board places advertisements to notify the public. To help familiarize the public with the Board, the advertisements were revised to include additional information on the Board and its purpose.

Where there is a strong public interest, or where other individuals may be impacted, advertisements are placed for mediation meetings, which are normally not open to the public. However, it is ultimately up to the mediator and the participants involved in the appeal to allow observers to attend a mediation.

Strategy C: The Board will establish and maintain contact with other tribunals.

Performance Measure
Review websites, business plans, and information of other tribunals.

Target Met
Yes

Results
In redesigning the Board's website, staff researched how other tribunals such as the National Energy Board, the Environmental Appeal Board of British Columbia, and the Ontario Environmental Appeal Tribunal, utilized and outlined information on their respective websites.

Future Focus
The Board plans to keep apprised of developments with other tribunals with the aim of continuing to improve the Board.

Performance Measure
Attend relevant conferences and training opportunities when feasible.

Target Met
Yes

Results
From April 1, 2004 to March 31, 2005, Board staff attended various courses such as the Performance Measures for Provincial and Municipal Government and Balanced Scorecard presentations for provincial departments. Staff also participated in Alberta Infrastructure's Symposium on Emergency Response Planning and attended lectures on the use of voluntary approaches for environmental policy-making in the United States, as well as various alternative dispute resolution courses. Participation in these courses allowed the Board to establish valuable contacts with other administrative tribunals and organizations with the purpose of sharing information and experiences, best practices, and to incorporate what was learned from others to improve how the Board functions.

Senior staff also attended media training, which included discussion of case studies, group discussion, developing a communication plan and key messages, and preparing for media interviews.

Future Focus
Staff are provided with ongoing learning opportunities that encourage them to grow and maximize their potential through the development of new skills and knowledge.

Strategy D: The Board will reflect environmental values.

Performance Measure
Provide staff with recycling facilities.

Target Met
Yes

Results
Staff are provided with recycling boxes in their offices. Blue bags are provided for recycling cans, bottles, and other recyclable items. Staff also recycle shredded paper and reuse items, such as binders, whenever possible.

Performance Measure
Engage in projects that promote protection of the environment.

Target Met
Yes

Results
The Board's General Counsel and Settlement Officer hosts two lecture sessions per year on the importance of recycling and the environment for Japanese exchange students from the University of Alberta, Faculty of Extension. As a key component of their English as a second language program, students are introduced to the topic of recycling and how to minimize waste in their own country.

Board staff attend Environmental Law Center brown bag lunch seminars, which focus on environmental protection.

Annually, Board staff participate in Alberta Transportation's Caring for Alberta's Highways (Adopt-A-Highway Program) where staff volunteer to clear litter from a 3 kilometre stretch of highway. In 2005, the Board decided to continue this program, but substituted the 3 kilometre stretch in southern Alberta to a location closer to the Board's office in Edmonton.

The Board's implementation of a new electronic document management system called Power Press streamlined the Board's processes and helped to encourage environmental protection by allowing the Board to convert appeal files from paper to electronic format. This reduces the use of paper and duplication.

Future Focus

In late 2005, the Board plans to host the 17th Annual Environmental Lawyers in Government Conference, which will be a forum to share ideas on environmental law that promote environmental protection initiatives across Canada.

The Board plans to scan and archive its closed appeal files in an electronic format using Power Press. Compact disks would then be available for the pubic to view all appeal files to date, print documents on demand, or allow staff to email sections of files where needed.

Goal 4: PEOPLE: Board member and staff development.[10]

Strategy A: The Board will provide educational opportunities for Board members.

Performance Measure

Inform Board members of environmental, ADR, administrative law, and technical training initiatives.

Target Met

Yes

Results

When new Board members are appointed, the Board Secretary advises them of alternative dispute resolution training initiatives.

Performance Measure

Encourage participation in environmental, ADR, administrative law, and technical training initiatives.

Target Met

Yes

Results

Board members completed various alternative dispute resolution courses through the Legal Education Society of Alberta and the Alberta Arbitration and Mediation Society such as Mediation of Civil Disputes, Alternatives in Dispute Resolution, Resolving Interpersonal Conflict, and Critical Skills for Communication in Conflict.

Dr. Frederick Fisher, Q.C., as Chair of the Board, attended the Canadian Council of Administrative Tribunals (CCAT) International Conference in Toronto from June 20 to 23, 2004. The conference was an opportunity to share the work of the Board, as well as learn what international communities, governments, and organizations are doing to promote better administration of justice.

In October 2004, the Board held its third alternative dispute resolution conference/training session entitled "Forging Partnerships between Federal/Provincial Governments and Members of First Nations". The conference/training session was conducted by Dr. Lawrence Susskind and Mr. Patrick Field of CBI and was held over two days. The sessions

[10] Development initiatives are dependent on Board schedule and finances.

included a number of presentations and simulations explaining interest-based negotiations in general and with respect to First Nations. Dr. Susskind is a world-renowned expert on interest-based dispute resolution, and he provided introductory and advanced mediation clinics for Board members and staff, which included in-depth discussion on mediation, effective communication, problem-solving, and role-plays.

Strategy B: The Board will provide staff with educational opportunities.

Performance Measure
Inform staff members of various training initiatives.

Target Met
Yes

Results
From April 1, 2004 to March 31, 2005, Board staff participated in various training initiatives including:

- Critical Skills for Communicating in Conflict, Alberta Arbitration and Mediation Society;
- Western Region Contaminated Sites Conference;
- Negotiation and Conflict Management Course, Canadian Association of Petroleum Landmen;
- Performance Measures Conference for Provincial and Municipal Government;
- Balanced Scorecard presentations for Provincial Departments;
- Use of Voluntary Approaches for Environmental Policy-making in the United States, Alberta Environment;
- Alberta Public Service Leaders: Managing Disputes;
- The Canadian Council of Administrative Tribunals International Conference in Toronto;
- Premier's Award of Excellence training;
- Facility Emergency Response Planning Symposium;
- Legal Education Society of Alberta seminar on E-Appeals;
- ISO 9001 Orientation Training;
- Media Training; and
- Canadian Bar Association initiatives with respect to administrative law, environmental law, and alternative dispute resolution.

Performance Measure
Encourage participation in ADR training.

Target Met
Yes

Results
Board staff attend the Canadian Bar Association section meetings relating to alternative dispute resolution.

The Board's General Counsel and Settlement Officer provides additional training to new Board members such as briefing Board members before mediations and providing constructive feedback during meetings.

The Board's General Counsel and Settlement Officer and Projects Officer participate as mediators in the Provincial Court Civil Claims Mediation Program.

In order to promote staff involvement in alternative dispute initiatives, the Board increased its membership with the Alberta Arbitration and Mediation Society from 2 members to 5 in 2005. Board staff also attend luncheons and general meetings sponsored by the Alberta Arbitration and Mediation Society.

In October 2004, Board staff organized and participated in the Board's third alternative dispute resolution conference/training session entitled "Forging Partnerships between Federal/Provincial Governments and Members of First Nations." The conference/training session was conducted by Dr. Lawrence Susskind and Mr. Patrick Field of CBI

and held over two days. The conference/training sessions included a number of presentations and simulations explaining interest-based negotiations in general and with respect to First Nations. Dr. Susskind is a world-renowned expert on interest-based dispute resolution, and he provided introductory and advanced mediation clinics for Board members and staff, which included in-depth discussion on mediation, effective communication, problem-solving, and role-plays.

In 2004, staff used learning account funds to purchase books on mediation, interpersonal communication, and facilitation.

In 2005, the Board became a Corporate Member of the ADR Institute of Canada. The institute provides national leadership in the development and promotion of dispute resolution services in Canada.

The Board's General Counsel and Settlement Officer made a presentation at the Provincial ADR Network Conference hosted by Municipal Affairs and acted as a facilitator for small group discussions. He also participated as a coach for the ADR Skills Development Course for Civil Lawyers, hosted by Alberta Justice, Civil Law.

Performance Measure
Encourage use of staff learning account.

Target Met
Yes

Results
From April 1, 2004 to March 31, 2005, staff used learning account funds to purchase computer equipment, fitness memberships and personal training sessions, digital equipment, and books on mediation, communication, and facilitation.

Strategy C: The Board will encourage staff to hold memberships in relevant organizations.

Performance Measure
Inform staff of relevant organizations.

Target Met
Yes

Results
The Board's Secretary informs all staff of new and relevant organizations for staff to join and participate in. Organizations are chosen as they relate to the career goals of each employee.

Performance Measure
Provide for memberships in mandatory organizations.

Target Met
Yes

Results
In 2004 to 2005, Board members and staff held memberships in a variety of organizations including the Law Society of Alberta, the Canadian Bar Association, the Institute of Public Administration of Canada, the Canadian Land Reclamation Association, and the Council of Canadian Administrative Tribunals. In 2005, the Board increased its corporate memberships from 2 to 5 with the Alberta Arbitration and Mediation Society and became a corporate member of the Alternative Dispute Resolution Institute of Canada.

Strategy D: The Board will promote a healthy workplace.

Performance Measure
Inform staff of opportunities for wellness training.

Target Met
Yes

Results
Board staff are informed of wellness training initiatives. Staff have access to internal resources that promote a positive, healthy, and safe work environment. Resources include newsletters, wellness guidebooks and initiatives that stress the importance of maintaining a healthy balance between personal and professional aspirations.

Annually, Board staff participate in Alberta Transportation's Caring for Alberta's Highways (Adopt-A-Highway Program) where staff volunteer to clear litter from a 3 kilometre stretch of highway. This promotes environmental awareness, physical wellness, and team building. In 2005, the Board decided to continue this program, but substituted the 3 kilometre stretch in southern Alberta to a location closer to the Board's office in Edmonton.

Performance Measure
Encourage staff to use learning account funds for health and wellness initiatives.

Target Met
Yes

Results
From April 1, 2004 to March 31, 2005, Board staff used almost 100 percent of learning account funds. Staff used funds to purchase fitness memberships, workout videos, personal training sessions, fitness courses, and books on weight training, fitness, and nutrition.

Future Focus
In April 2005, the Government of Alberta Learning Account Policy included fitness equipment as an item employees can now purchase. As a result of this broadening of policy to include more fitness related items, the Board believes learning account funds may be used for these types of purchases in the future.

Performance Measure
Encourage open, honest, and respectful communication, including being receptive to suggestions and ideas on improving the workplace.

Target Met
Yes

Results
Staff meet regularly to discuss new Board developments and are encouraged to share their thoughts or concerns regarding topics of discussion. Staff are also encouraged to share their thoughts or concerns on a more informal basis.

During this reporting year, the Board purchased a new electronic document management system called Power Press. In researching vendors for this project, staff were encouraged to be involved in meetings and demonstrations whenever possible. Information was fully discussed, and staff were included in the development and research phases to ensure the product would be user-friendly and effective for those working with the equipment. Currently, follow-up discussions take place with staff to see how Power Press is working and if additional training is necessary.

In 2005, the Board received approval from the Chair to proceed with ISO 9001:2000 certification. Staff met to discuss the implications of ISO and were encouraged to ask questions to gain clarification and voice concerns. Staff were provided with ISO orientation training, which provided information on the certification process.

Staff were asked to contribute to creating a communications plan for the Board. Staff were encouraged to provide key messages from their perspective that would highlight the importance and the purpose of the Board.

Staff are consulted and are requested to fully participate in the Board's strategic planning and business planning initiatives.

Strategy E: The Board will recognize contributions of its staff.

Performance Measure
Provide informal recognition.

Target Met
Yes

Results
The Board believes recognition encourages teamwork and camaraderie among employees. Staff are taken out for lunch in recognition for working on large projects, organizing conferences, and participating in various initiatives that require staff time and effort. Emails are also sent to staff acknowledging commendable work.

Performance Measure
Provide formal recognition.

Target Met
Yes

Results
Staff receive recognition memos and letters thanking them for their support and contributions regarding in-depth projects.

Future Focus
The Board values its employees and encourages excellence by acknowledging staff for their contributions and commitment. In 2005 to 2006, the Board plans to begin participating in a formal ceremony recognizing employee contributions and years of service.

Goal 5: GOVERNMENT: The Board will support applicable Government of Alberta initiatives.[11]

Strategy A: The Board will support the Government of Alberta's fiscal goals.

Performance Measure
Work to maintain a balanced budget.

Target Met
Yes

Results
The Board adheres to responsible fiscal management. Due to external factors affecting the Board's workload that could not be foreseen, the Ministry of Environment increased the Board's budget of $945,000 to $1,046,000 in 2004 to 2005. The additional money was requested to fund important Board functions such as an extensive mediation involving Imperial Oil Ltd..

Future Focus
The Board will keep its fiscal plan on track while ensuring its priorities are met.

[11] The Board will take all reasonable steps to control its expenditures; however, the workload of the Board is externally driven, and therefore, has little control over factors such as number of appeals filed, location of the project, and complexity of issues.

Performance Measure
Provide financial reporting as requested.

Target Met
Yes

Results
The Board works closely with the Ministry of Environment regarding budget allocation and responds to all requests in a timely manner.

Alberta Environment requested a cost breakdown on advertising for the Board to be published by Public Accounts. The Board supplied the information within the same working day.

Performance Measure
Promote fiscally responsible spending.

Target Met
Yes

Results
The Board takes all reasonable steps to control its expenditures; however, the workload of the Board is externally driven, and therefore, has little control over factors such as number of appeals filed, the location of the project, and the complexity of issues.
In order to reduce the cost of processing appeals, and without compromising the principles of natural justice, the Board addresses appeals via written submissions, uses one person panels where appropriate, holds conference calls among panel members versus in-person meetings, and combines appeals where appropriate.

The Board continues to encourage and resolve appeals through mediation. Compared to preliminary meetings or Board hearings, mediation is a more cost-effective approach to resolving disputes. During this reporting year, the Board held 18 mediations and all were successfully resolved, thus saving the Board the additional costs of proceeding with these appeals.

With the implementation of the Power Press system, the Board is now able to incorporate on-site colour printing, which allows the Board to reproduce colour documents. This results in an exact copy of the file being produced for all participants. In the past, colour reproductions needed to be outsourced by the Board, which took additional time and was a significant cost.

The Board decided to change its subscription to the *Administrative Law Reports* to receive only the bound version. As a result of this change, the Board is able to reduce its subscription price and eliminate duplication.

In researching the Board's new electronic document management system, staff compared six vendors. The Board made its final decision based on product, ease of use, and associated costs.

Future Focus
The Board will continue to promote fiscally responsible practices.

Strategy B: The Board will contribute to the Government of Alberta's Business Plan and goals.

Performance Measure
Report to the Minister of Environment as prescribed in the Memorandum of Understanding between the Minister of Environment and the Environmental Appeals Board.

Target Met
Yes

Results
The Board provided its 2003 - 2004 Annual Report by June 30, 2004, and its 2005 - 2008 Business Plan by March 31, 2005.

Strategy C: The Board will support applicable cross-ministry initiatives.

Performance Measure
Participate in applicable cross-ministry initiatives where requested.

Target Met
Yes

Results
The Board agrees in principle with cross-ministry initiatives within the confines of the Board's jurisdiction and the principles of natural justice. From April 1, 2004 to March 31, 2005, the Board was not requested by the Ministry of Environment to participate in any cross-ministry initiatives.

Performance Measure
Seek opportunities to support applicable cross-ministry initiatives.

Target Met
Yes

Results
As part of the Board's ongoing commitment to support the Government of Alberta's cross-ministry Aboriginal Policy Initiative, it held its third ADR conference entitled "Forging Partnerships Between Federal/Provincial Governments and Members of First Nations." The Aboriginal Policy Initiative seeks to develop collaborative projects to benefit Aboriginal communities and increase the capacity within the Alberta government for collaboration with Aboriginal governments, organizations, and communities. The Board recognizes the important role of First Nations in the environmental regulatory process and discussed this during the conference.

Future Focus
In the Board's 2005-2008 Business Plan, a plan is outlined for the Board to support medium and long-term cross-ministry initiatives, including the Aboriginal Policy Initiative, the Economic Development Strategy, the Rural Development Strategy, the Northern Development Strategy, the General Development Strategy, the Climate Change Strategy, Securing Tomorrow's Prosperity – Sustaining the Alberta Advantage, Water for Life: Alberta's Strategy for Sustainability Framework for a Healthy Alberta, Environmental and Resource Development Regulatory Framework, and the Aboriginal Policy Framework.

The Board also plans to organize an annual alternative dispute resolution conference with a multi-disciplinary, cross-ministry approach to conflict management.

Accomplishments

- In 2004, the Board dedicated its mediation room to Dr. John P. Ogilvie, who served as a Board member from September 1, 1994 to September 1, 2002. From September 1997 to September 2003, Dr. Ogilvie also served as Vice-Chair. During his time with the Board, Dr. Ogilvie was a leader in the Board's mediation program.

- In October 2004, the Board held its third alternative dispute resolution conference/training session entitled "Forging Partnerships between Federal/Provincial Governments and Members of First Nations." The conference/training session was conducted by Dr. Lawrence Susskind and Mr. Patrick Field of CBI, and held over two days. The conference/training sessions included a number of presentations and simulations explaining interest-based negotiations in general and with respect to First Nations. Dr. Susskind is a world-renowned expert on interest-based dispute resolution, and he provided introductory and advanced mediation clinics for Board members and staff, which included in-depth discussion on mediation, effective communication, problem-solving, and role-plays.

- In October 2004, the Board dedicated its hearing room to Dr. William A. Tilleman to commemorate his long-standing work as the first Chair of the Environmental Appeals Board.

- In late 2004, the Board implemented a new and innovative electronic document management system called Power Press. This system is intended to streamline the Board's processes, help to avoid duplication, and assist the Board in conducting its work in a more effective and efficient manner. The Board must produce large quantities of documents and is required to provide copies to all participants within tight timelines in accordance with the principles of administrative law. Power Press allows the Board to convert appeal files from paper to electronic format, which results in having a duplicate image of the Board's master file in electronic form. This makes providing copies of each appeal to participants easier and more efficient. Power Press also incorporates on-site colour printing, thereby reducing the need to outsource the work, which took additional time and was a significant cost.

- In December 2004, the Board's then Chair, Dr. Frederick C. Fisher, was appointed as a Provincial Court Judge sitting in Medicine Hat, Alberta.

- In 2005, the Board received approval from its Chair to proceed with ISO 9001:2000 certification. Achieving certification under this quality management system will help the Board continue to make improvements in performance, co-ordination, and productivity. In March 2005, the Board began its introductory phase of ISO, which included staff working to identify existing Board procedures.

- In 2005, the Board became a Corporate Member of the ADR Institute of Canada. The institute provides national leadership in the development and promotion of dispute resolution services in Canada. The Board also expanded to a corporate membership with the Alberta Arbitration and Mediation Society, increasing its membership from 2 to 5.

- In March 2005, the Board relaunched its website with a fresh look and new information. Since this relaunch, the Board has received many positive comments from our stakeholders. Over the 2004 to 2005 period, the Board updated its website on a regular basis to ensure all information was relevant and up-to-date.

- As of March 31, 2005, 74 of the Board's decisions have been reported in the *Canadian Environmental Law Reports*. The Board's decisions have also been published in the *Administrative Law Reports* and the *Alberta Law Reports*. Decisions have been the subject of scholarly analysis in law journals and have been widely reported in other legal and environmental publications. Selection of the Board's hearing decisions into the reports is a reflection of the importance and quality of Board decisions. Many of the Board's decisions are also reported in the media, such as newspapers and television.

- In 2005, Board staff participated on the Premier's Award of Excellence Leadership Team.

- The Board's General Counsel and Settlement Officer and Senior Research Officer are part of the Executive of the Environmental Law Subsection (Northern) of the Canadian Bar Association. This involvement promotes

contact with other environmental law practitioners and encourages the sharing of knowledge and the discussion of developing issues in the field of environmental law. Participation also involves contact with other agencies such as the Natural Resources Conservation Board and the Federal Department of Fisheries and Oceans.

- The Board's General Counsel and Settlement Officer hosts two lecture sessions per year on the importance of recycling and the environment for Japanese exchange students from the University of Alberta, Faculty of Extension. As a key component of their English as a second language program, students are introduced to the topic of recycling and how to minimize waste in their own country.

- The Board continues to send confidential surveys to participants following mediations. The surveys assess satisfaction or concerns with the mediation process and are used to assist the Board in making changes and improvements to its mediation process.

- The Board's decisions on whether to provide access to information has never been appealed under the *Freedom of Information and Protection of Privacy Act*. This reflects transparency and openness of the Board's processes and the high quality of its decisions.

- The Board is a member of the Council of Canadian Administrative Tribunals which assists and promotes sound administrative decision-making.

- The Board promotes public awareness of its processes by providing public presentations. (See: Appendix C for a listing of the Board's presentations from April 1, 2004 to March 31, 2005.)

- The Board's General Counsel and Settlement Officer has taught at the University of Alberta, Faculty of Business undergraduate program on Natural Resources and Environmental Law, and guest lectured at the University of Alberta, Faculty of Law Alternative Dispute Resolution course, and the University of Calgary, Faculty of Law, Environmental Law course.

Statistics

Appeal Statistics

Number of Appeals – A total of 124 appeals were filed with the Board between April 1, 2004 and March 31, 2005. The total number of appeals filed to date is 1,289.

Processing Time per Appeal – The average time for processing an appeal, as calculated from the total number of appeals over the Board's existence, is 3.88 months per appeal.

Mediation – As of March 31, 2005, 139 matters (calculated by Approval Holder, which corresponds to 581 appeals) have undergone mediation, of which 116 matters were successfully resolved. This demonstrates an 83 percent success rate. This reporting year, the Board held 18 mediations and all were successfully resolved.

Judicial Reviews – Since the Board was established in 1993, there have been 32 judicial reviews stemming from 21 matters in relation to 36 appeals. Of the 32 judicial reviews, 6 were withdrawn and 26 proceeded. Of the 26 judicial reviews that proceeded, 13 were upheld, 7 were returned to the Board, 3 are pending, and 3 did not involve the Board. With respect to the 3 judicial reviews that did not involve the Board, 2 were judicial reviews of the Minister's decision only, and the Board was not named. The remaining judicial review initially named the Board along with provincial and federal governments. However, the Court held the judicial review was improperly filed against the Board, and it should only be allowed to proceed against the provincial and federal governments.

Report and Recommendations – The Board has submitted a total of 107 Report and Recommendations to the Minister with only 1 of the 107 not being accepted by the Minister. Of the 107 Report and Recommendations, 13 were submitted to the Minister this year, 7 were with respect to hearings, and 6 were with respect to mediations. The Minister accepted all 13 Report and Recommendations.

Decision Reports – The Board has issued 198 Decision reports to date. Of the 198 Decisions reports, 31 were issued this year.

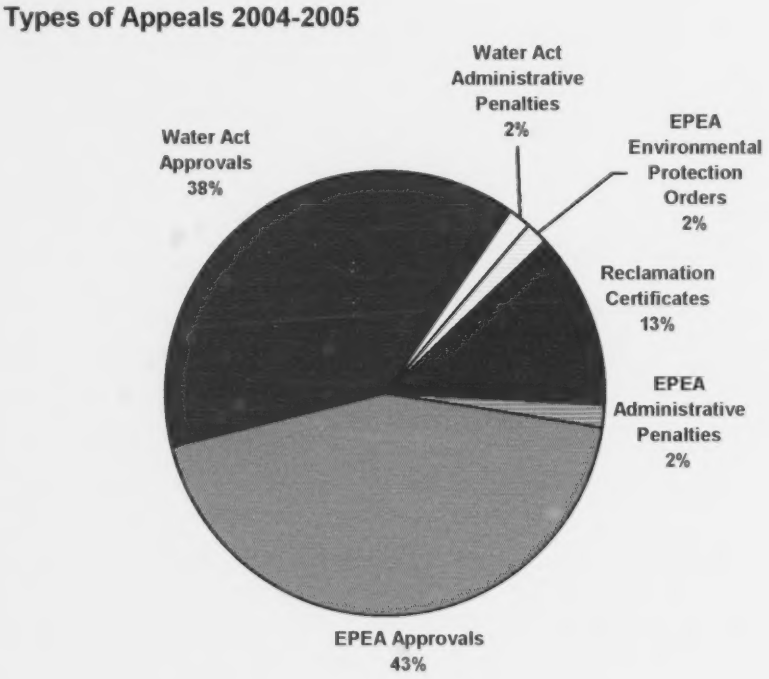
Costs Decisions – The Board has issued 27 Costs Decisions to date. Of the 27 Costs Decisions, 3 were issued this year. Of these 3, 2 were applications for interim costs and the Board awarded interim costs in 1 case, and 1 application was for final costs and the Board did not award any costs in that case.

Discontinuance of Proceedings – The Board has issued 169 Discontinuance of Proceedings since 1996. Of the 169, 19 were issued this reporting year.

Appeal Types

Chart I – During this year, the Board received 124 appeals relating to the following issues: 54 EPEA Approvals; 48 *Water Act* Approvals; 2 EPEA Environmental Protection Orders; 16 EPEA Reclamation Certificates; 2 EPEA Administrative Penalties; 2 *Water Act* Administrative Penalties.

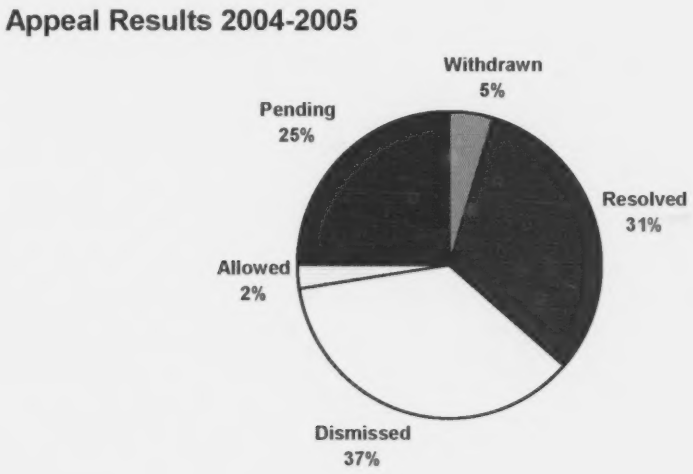
CHART I


Types of Appeals 2004-2005
Water Act Administrative Penalties 2%
EPEA Environmental Protection Orders 2%
Reclamation Certificates 13%
EPEA Administrative Penalties 2%
EPEA Approvals 43%
Water Act Approvals 38%

Appeal Results

Chart II – The 124 appeals filed this year were dealt with as follows: 6 were withdrawn; 39 were resolved; 45 were dismissed; 3 were allowed; and 31 are pending.

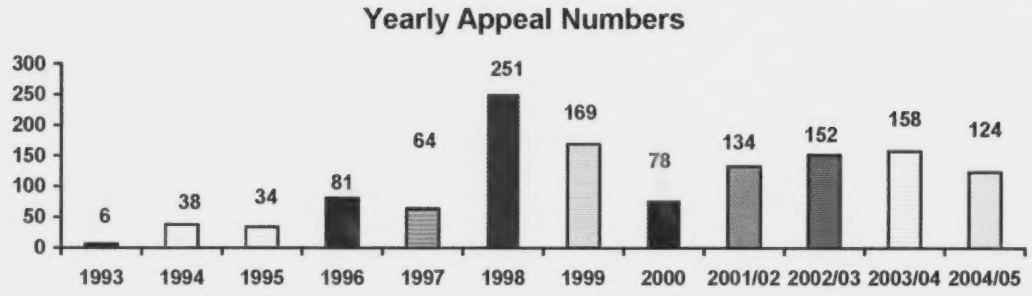
CHART II



Number of Appeals

Chart III – 1993-6; 1994-38; 1995-34; 1996-81; 1997-64; 1998-251; 1999-169; 2000-78; 2001/2002-134; 2002/2003-152; 2003/2004-158; and 2004/2005-124. Six appeals were filed with the Board during the period of September to December 1993. During the 1994 calendar year, 38 appeals were filed. During 1995, 34 appeals were filed. In 1996, 81 appeals were filed. During 1997, 64 appeals were filed. In 1998, the Board received 251 appeals, of which 209 related to one approval holder. Of the 169 appeals filed in 1999, 115 related to 1 approval holder. During 2000, 78 appeals were filed which relates well to the 1997 numbers where there was no one particular approval which generated a majority of appeals for that year. 2001 saw an increase in the number of appeals filed to 134; however this increase is to some degree the result of the change in the timing of the reporting period for the 2001 annual report, which resulted in a 15 month reporting period as opposed to 12 a month reporting period. (The Board was required to switch to reporting based on the fiscal year instead of the calendar year.) The Board received 159 appeals from April 2002 to March 2003 and 158 appeals from April 2003 to March 2004. Over the course of these two reporting periods, the Board saw a similar number of appeals. Of the 152 appeals filed in 2002-2004, 27 of the 33 EPEA appeals received were with respect to 1 approval holder. Of the 108 *Water Act* appeals filed, 30 related to the same project. Of the 158 appeals filed in 2003 - 2004, 101 of the *Water Act* appeals dealt with only 3 approval holders. During this reporting period, the Board saw a slight decrease in its total number of appeals, receiving only 124. This decrease may correlate to a decrease in *Water Act* related appeals as compared to previous years. This reporting year, the Board received 48 Water Act appeals which account for only 39% of the total number of appeals received compared to 71% in 2002-2003 and 84% in 2003-2004. However, with the implementation of Alberta Environment's new reclamation program, the Board observed an increase in reclamation related appeals, receiving 16 appeals this year compared to 7 and 6 in 2002-2003 and 2003–2004 respectively. Based on the cumulative number of 1,289 total appeals over 11.5 years of Board history, the Board is averaging 112 appeals per year.

CHART III



Financial Information

Summary of Spending Profile – The workload of the Board is externally driven, and the costs will accordingly vary with the number of appeals that are filed. The generation of appeals is a matter that is beyond the Board's control.

Budget	2000/01 Actual	2001/02 Actual	2002/03 Actual	2003/04 Actual	2004/05 Actual	2005/06 Estimate
Operating	898,502	921,169	1,018,518	959,000	1,046,000	1,069,000
Capital	0	0	0	0	0	0
Total	898,502	921,169	1,018,518	949,751	974,541	1,069,000

Due to external factors affecting the Board's workload that could not be foreseen, the Ministry of Environment increased the Board's original budget in 2004 to 2005 from $945,000 to $1,046,000.00. This additional money was requested to fund important Board functions such as extensive mediation. However, $50,000 was returned to Alberta Environment for expenditures that did not materialize during this reporting year.

Conclusion

The Environmental Appeals Board is proud of its results and accomplishments over this past reporting year. The Board remains committed to its mission and will continue to look at new and improved ways to increase efficiency and effectiveness and satisfy those who come before us. The Board is excited for what the future holds and is ready to face the challenges that lie ahead. Through its efforts, the Board will continue to strive to achieve its operational goals while meeting the needs and expectations of the Government of Alberta and its citizens.

The Board values your feedback. If you are interested in providing comments, or receiving additional information about the Board, please contact the Board at:

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Website: www.eab.gov.ab.ca

Appendix A

SUMMARY OF APPEALS

94-011
Appellant(s) – Sarg Oils and Sergius Mankow, **Operator** – Sarg Oils, **Location** – Camrose, **Type of Appeal** – As listed below

Overview - On September 19, 1994, 16 appeals were filed by Sarg Oils and Sergius Mankow with respect to the issuance of 16 Environmental Protection Orders (EPOs). The EPOs required the Appellants take remedial action with respect to 16 abandoned well sites in Camrose.

Decision – On May 11, 1995, the Board issued a Decision indicating that the Director did not err in issuing the EPOs against Mankow and Sarg. The Board's decision underwent judicial review in the Court of Queen's Bench with a judgment stating that the Board must rehear the appeal.

Cite as: *Sarg Oils Ltd.* v. *Director of Land Reclamation, Alberta Environmental Protection.*

Report and Recommendations - A hearing took place on November 5 and 6, 1996 in Edmonton. The Board issued a Report and Recommendations to the Minister on December 5, 1996, confirming the Inspector issued the EPOs properly; however, it directed that the Department of Environment immediately examine the criteria followed when deciding what parties are to be recipients of EPOs; and the criteria should be made publicly available. The Minister agreed with the Board's report on December 16, 1996.

Cite as: *Sarg Oil Ltd. and Sergius Mankow* v. *Director of Land Reclamation, Alberta Environmental Protection.*

As of March 31, 2005, the Minister's decision is under judicial review.

01-096
Appellant(s) –Ms. Linda Court, **Operator** – Lafarge Canada Inc., **Location** – Municipal District of Rocky View No. 44, **Type of Appeal** – As listed below

Overview - On October 2, 2001, Alberta Environment issued Approval No. 150612-00-00 to Lafarge Canada Inc. for the opening up, operation, and reclamation of a pit on N 7-22-28-W4M and NE 12-22-29-W4M in the Municipal District of Rocky View, Alberta.

Interim Decision - On November 21, 2001, the Board received a Notice of Appeal from Ms. Linda J. Court appealing the Approval. In consultation with the parties, a mediation meeting was held on January 23, 2002, in Calgary, Alberta. However, the parties did not reach a resolution. Although the Notice of Appeal stated the grounds of the appeal, the Board decided that it was necessary to more precisely indicate what issues were properly before the Board. After reviewing the submissions, the Board issued a Decision on April 22, 2002, stating that the only issues properly before it were: 1. The effect that dust and other air pollutants from the Lafarge Operation may have directly on the Appellant; 2. The effect that noise from the Lafarge Operation may have directly on the Appellant; and 3. The cumulative effects that dust and other air pollutants and noise from the Lafarge Operation, and as specifically regulated by the Approval, may have directly on the Appellant. The operation of the other facilities in the area is *not* before the Board. The other facilities are only relevant to the extent that they form part of the circumstances in which the Lafarge Operation is proposed to be constructed, and to the extent that they contribute to the determination of the cumulative effects as they directly affect the Appellant. The threshold issue of the directly affected status of the Appellant remains outstanding, and this is an issue that must be addressed as a preliminary matter of jurisdiction at the hearing. No representations may be made on any other matters at the hearing of this appeal.

Cite as: *Court* v. *Director, Bow Region, Regional Services, Alberta Environment re: Lafarge Canada Inc.* (22 April 2002), Appeal No. 01-096-ID (A.E.A.B.).

Intervenor Decision - After the issues with respect to this appeal were determined, hearing dates of July 24 and 25, 2002 were decided. As a result of posting the Notice of Hearing in local newspapers, the Board received 19 requests for intervenor status from the residents, the Calgary Health Region, the Alberta Roadbuilders and Heavy Construction Association, the Alberta Sand and Gravel Association, Ms. Shirley and Mr. Rick Schmold, Ms. Joan and Mr. Gerald Marshall, Mr. Brian Evans, Mr. A.G. Soutzo and Burnco Rock Products Ltd. The Board reviewed the requests and the submissions from the parties and on July 12, 2002, issued a Decision advising that the Calgary Health Region would have full party status at the hearing. The remaining individuals, companies, and organizations were permitted to file written submissions only.

Cite as: Intervenor Decision*: Court* v. *Director, Bow Region, Regional Services, Alberta Environment* re: *Lafarge Canada Inc.* (12 July 2002), Appeal No. 01-096-ID (A.E.A.B.).

Decision – The Board held a hearing on July 24 and 25, 2002 and received evidence on issues concerning: 1. Ms. Court's directly affected status, 2. The effect that dust and other air pollutants from the Lafarge Operation may have directly on Ms. Court, 3. The effect that noise from the Lafarge Operation may have directly on Ms. Court, and 4. The cumulative effects that dust, other air pollutants, and noise from the Lafarge Operation, as specifically regulated by the Approval, may have directly on Ms. Court. Prior to considering the substantive issues in this appeal, the Board had to determine if Ms. Court was directly affected by the Approval issued to Lafarge. Based on the evidence received and the arguments of the parties, the Board issued a Decision on August 31, 2002, advising that Ms. Court was not directly affected by the Lafarge Operation. As a result, the Board does not have the jurisdiction to consider the other issued raised in this appeal. The Board was of the opinion that Ms. Court's real concern is the impact of the other existing sand and gravel operations in the area.

Cite as: *Court* v. *Director, Bow Region, Regional Services, Alberta Environment* re: *Lafarge Canada Inc.* (31 August 2002), Appeal No. 01-096-D (A.E.A.B.).

Discontinuance of Proceedings - Ms. Court subsequently filed a Judicial Review against the Board's Decision of August 31, 2002 with the Court of Queen's Bench of Alberta. The Court issued its decision on May 26, 2003, sending the matter back to the Environmental Appeals Board to be dealt with on the basis that the Appellant was directly affected. The Board began the process of scheduling a hearing of the appeal, however the Appellant withdrew her appeal. As a result, on September 17, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Court* v. *Director, Bow Region, Regional Services, Alberta Environment* re: *Lafarge Canada Inc.* (17 September 2004), Appeal No. 01-096-DOP (A.E.A.B.).

02-079 and 02-080
Appellant(s) – Ms. Katherine McCulloch, Messrs. Richard Kelk and Ross Warner, **Operator** – AAA Cattle Company, **Location** – Didsbury, **Type of Appeal** – Active

On November 7, 2002 the Board received a Notice of Appeal from Ms. Katherine McCulloch and Mr. Richard Kelk, and on November 8, 2002, a Notice of Appeal was received from Mr. Ross with respect to Licence No. 00188451-00-00, issued under the *Water Act* R.S.A. 2000, c. W-3 to AAA Cattle Company Ltd. The Licence authorizes the diversion of 126,150 cubic metres of groundwater annually from Production Well No. PW5-02, PW6-02, PW7-02 and PW8-02, located in the SW 04-031-27-W4, near Didsbury, Alberta, for the purpose of Agriculture (15,700 head feedlot expansion). The Appeal was placed in abeyance pending the outcome of the Natural Resources Conservation Board's process that was before the Court of Appeal. On December 15, 2004, the Board forwarded a copy of the Court of Appeal decision to the parties and advised that the Board must determine what effect, if any, the Court of Appeal decision may have on the appeals filed. The Board requested the parties provide any comments before making its final decision. The appeal was held in abeyance pending the expiry of any NRCB appeal periods, but requested a status report by April 12, 2005.

As of March 31, 2005, this matter is ongoing.

02-131 and 02-140
Appellant(s) – Mr. Allan Blomme, **Operator** – Laurence Marketing Group Ltd. and Mr. Allan Blomme, **Location** – Okotoks, **Type of Appeal** – Active

On December 23, 2002, the Board received a Notice of Appeal from Mr. Allan Blomme appealing Enforcement Order No. 2002-WA-03, issued to the Laurence Marketing Group Ltd. and Mr. Allan Blomme for an alleged contravention of sections 36(1) and 142(1)(h) of the *Water Act* R.S.A. 2000, c. W-3, by conducting an activity without an Approval at Plan 8911194, Block 1, (Wilderness Campground) in Okotoks, Alberta. The Board held a Preliminary Meeting on April 3, 2003 and considered the following questions: 1. what is the proper onus with respect to the hearing of this matter; 2. what hearing procedures will be used for this hearing, including whether the hearing will be conducted in writing and what deadlines should be set?; 3. whether Alberta Environment should be required to provide "will say" statements prior to the hearing or as part of the hearing procedure?; 4. whether the Board should dismiss the appeal as requested by Alberta Environment; and 5. whether to accept the Notice of Appeal filed by Mr. Allan Blomme on behalf of the Laurence Marketing Group. On December 23, 2004, the Appellants requested an abeyance until May 2005 to allow for remedial work to be completed.

As of March 31, 2005, this matter is ongoing.

02-151
Appellant(s) – Mr. F.W. (Fritz) Seidel, **Operator** – Mr. Richard and Ms. Connie Blair and Lazy H Trail Company Ltd., **Location** – near Cochrane, **Type of Appeal** – Decision

On February 13, 2003, the Board received a Notice of Appeal from Mr. Richard and Ms. Connie Blair and Lazy H Trail Company Ltd. with respect to Licence No. 00154141-00-00 issued under the *Water Act* to them authorizing the diversion of 8,461 cubic metres of water annually from Production Well No. CW1-91 and CW2-01, located in the NW 25-26-07-W5M for an industrial camp (British Army Training Unit Suffield Water Supply). On March 14, 2003, the Board received a Notice of Appeal from Mr. Fritz Seidel. The Board scheduled a mediation involving all parties to be held in Cochrane, Alberta. However, prior to the mediation meeting, the Board received a letter from Mr. and Ms. Blair requesting the appeal of Mr. Seidel be dismissed. The Board held a Preliminary Meeting on April 24, 2003, to deal with the objections of Mr. and Ms. Blair prior to proceeding to the mediation meeting. After hearing the arguments of the parties at the Preliminary Meeting, the Board issued a Decision on November 29, 2004, denying the Blair's request to dismiss the Notice of Appeal.

Cite as: Preliminary Motion*: Seidel* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *Richard and Connie Blair and Lazy H Trail Company Ltd.* (29 November 2004), Appeal No. 02-151-ID1 (A.E.A.B.).

02-152, 03-001, 002, 003, 005 and 006
Appellant(s) – County of Grande Prairie No. 1, Mr. Ernie Bartsch, Mr. Brock Smith, Mr. Allan Greber, Mr. David Lowen and Mr. Sidney Hogg, **Operator** – Slave River Exploration Ltd. **Location** – near Hyth, **Type of Appeal** – Active

The Board received Notices of Appeal from the County of Grande Prairie No. 1, Mr. Ernie Bartsch, Mr. Brock Smith, Mr. Allan Greber, Mr. David Lowen and Mr. Sidney Hogg, appealing Licence No. 00192607-00-00, issued under the *Water Act* R.S.A. 2000, c. W-3 to Slave River Exploration Ltd. The Licence authorizes the diversion of 36,500 cubic metres of water annually from the well in LSD 05-30-073-12-W6 for the purpose of industrial (injection) near Hythe, Alberta. The Board scheduled a written submission process to deal with preliminary motions received from Alberta Environment. However, the Board decided that prior to making a determination on the preliminary motions relating to the validity of the appeals and the Stay requests, it would like to hold a mediation meeting in order to assist the parties in reaching a resolution of the appeals. The Board held a mediation meeting on July 28, 2003, in Grande Prairie, Alberta. A resolution was reached between the participants with the exception of the County of Grande Prairie No. 1, Mr. Smith and Mr. Hogg. As a result, the Board began the appeal process regarding the unresolved appeals by addressing outstanding preliminary motions. Previously, all parties submitted written submissions, and based on these submissions, the Board determined that the only valid Appeal before the Board was filed by Mr. Hogg, as he submitted a valid Statement of Concern. On November 7, 2003, the Board received correspondence advising that Midnight Oil & Gas Ltd. acquired Slave River Exploration Ltd. The Board granted a number of abeyances, the last one to July 2005 to allow Midnight Oil & Gas Ltd. to explore an alternate, non-potable water alternative to the project.
As of March 31, 2005, this matter is ongoing.

03-010

Appellant(s) – Mr. Michael Monner, **Operator** –New Dale Hutterian Brethren, **Location** – near Milo, **Type of Appeal** – Active

Overview - On June 30, 2003, the Board received a Notice of Appeal and request for a Stay from Mr. Michael Monner with respect to Approval No. 00136848-00-00 issued under the *Water Act* to the New Dale Hutterian Brethren authorizing them to operate drainage works on an unnamed water body, a tributary to Indian Lake, at NW 15-20-21-W4M, 16-20-21-W4M, and 17-20-21-W4M, near Milo, Alberta. Upon review of Mr. Monner's reasons for a Stay, the Board concluded that no irreparable harm would take place on Mr. Monner's land as a result of activities authorized under the Approval. As a result, the request for a Stay was denied. A mediation meeting was held on August 6, 2003, but was unsuccessful in reaching an agreement. A hearing was held on January 27, 2004, with the Siksika Nation, Alberta Transportation, and the Vulcan County participating as intervenors. At the hearing, the Siksika Nation raised jurisdictional issues. The Board heard arguments on the substantive issues and set a schedule to receive arguments on the jurisdictional matter.

Stay Decision - As the Board had to determine the jurisdictional matter before making its final decision on the substantive matters, both Mr. Monner and the Siksika Nation requested a Stay of the Approval. Based on the submissions and arguments of the parties and intervenors, the Board issued a Decision on November 29, 2004, and determined a Stay was not warranted as there would be no irreparable harm to the applicants and the public interest did not support a Stay.

Cite as: Stay Decision: *Monner* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *New Dale Hutterian Brethren* (29 November 2004), Appeal No. 03-010-ID1 (A.E.A.B.).

Report and Recommendations - With regard to the substantive issues, the Board determined that drainage works would not have a detrimental effect on Mr. Monner's property and recommended the Approval be upheld. As Alberta Transportation and Vulcan County raised the issue of public safety, the Board issued a Report and Recommendations on October 13, 2004, recommending the Approval be varied by adding two conditions to ensure the roadbed adjacent to the existing culvert at Secondary Highway 842 and the roadbed adjacent to Township Road 202 are not impacted by the operation of the drainage works.

Cite as: *Monner* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *New Dale Hutterian Brethren* (13 October 2004), Appeal No. 03-010-R (A.E.A.B.).

As of March 31, 2005, the Board is reviewing cost applications related to these appeals.

03-014-019, 021-027, 029-038 and 082

Appellant(s) – Ms. Linda Covey, Ms. Elin Barlem, Mr. J. Mark Barlem, Ms. Margaret Baycroft, Mr. Bill and Ms. Linda Biggart, Mr. Leo E. Carter, Ms. Judy Hudson, Mr. Robert Lewis, Mr. Ron Macdonald, Ms. Margaret Medak, Ms. Laurie Miller, Mr. Randy Miller, Mr. Len Plummer, Ms. Karen Strong, Mr. Laurence Strong, Ms. Leah Wile, Ms. Laurie Zaleschuk, Ms. Dixie and Mr. Kevin Ingram, Mr. Robert Miller, Mr. Larry and Ms. Elenor Brown, Mr. Sydney and Ms. Myrtle Quartly, Mr. William and Ms. Doreen Thomsen, Mr. William Froling, Ms. Jean Veldkamp and Mr. Howard Milligan, **Operator** – Mr. Hal Willis, **Location** – Innisfail, **Type of Appeal** – as listed below

Overview - On July 22 and 23, 2003, the Board received 26 Notices of Appeal and requests for a Stay in relation to Approval 00193447-00-00 issued under the *Water Act* to Mr. Hal Willis. The Approval authorizes the placement of clean fill on property adjoining Dodd's Lake at SW 28-35-28-W4M in Innisfail, Alberta. The purpose of placing the fill is to allow for the construction of a housing development. The Board wrote to the parties on August 14, 2003, and September 19, 2003, regarding the Stay and requested submissions. On October 24, 2003, the Board wrote to the parties granting a temporary Stay on the basis that, *prima facie*, at least one of the Appellants is directly affected. A Preliminary Meeting was held on December 16, 2003, to decide the directly affected status of the Appellants, whether the Board should extend or release the Stay, whether the government has participated in a public review under the *Canadian Environmental Assessment Act* (Canada) in respect of all of the matters included in the Notices of Appeal, and the issues to be heard at a hearing should one be held. After receiving written submissions and hearing evidence at the Preliminary Meeting, on February 2, 2004, the Board notified the parties that: 1. the Stay of the Approval will remain in place until the Minister of

Environment releases his decision; 2. the matter was not the subject of a *Canadian Environmental Assessment Act* review; 3. the following appeals and Appellants have been dismissed: Ms. Linda Covey 03-014, Ms. Elin H. Barlem 03-015, Mr. J. Mark Barlem 03-016, Mr. Bill and Ms. Linda Biggart 03-018, Mr. Leo E. Carter 03-019, Ms. Judy Hudson 03-021, Mr. Robert R. Lewis 03-022, Mr. Ron MacDonald 03-023, Mr. Len Plummer 03-027, Ms. Karen Strong 03-029, Mr. Laurence Strong 03-030, Ms. Laurie Zaleschuk 03-032, Mr. Robert J. Miller 03-034, Mr. Larry and Ms. Eleanor Brown 03-035, Mr. Sydney and Ms. Myrtle Quartly 03-036, Mr. William Froling 03-038, and Ms. Jean Veldcamp and Mr. Howard Milligan 03-082; and 4. the following appeals and Appellants are directly affected and their appeals will proceed to a hearing: Ms. Margaret Baycroft 03-017, Ms. Margaret E. Medak 03-024, Ms. Laurie A. Miller 03-025, Mr. Randy Miller 03-026, Ms. Leah Wile 03-031, Ms. Dixie and Mr. Kevin Ingram 03-033, and Mr. William and Ms. Doreen Thomsen 03-037. On March 23, 2004, the Board notified the parties that the only issue to be heard at the Hearing would be "Has the Director properly considered the issue of water quality impacts in issuing the Approval to place fill in the specified location."

Interim Decision - On January 20, 2005, the Board issued a Decision which determined: 1. The Appellants at the hearing will be: Ms. Margaret Baycroft, Ms. Margaret E. Medak, Ms. Laurie Ann Miller, Mr. Randy Miller, Ms. Leah Wile, Ms. Dixie and Mr. Kevin Ingram, and Ms. Doreen and Mr. William Thomsen; all the other appeals are dismissed; 2. the Stay will remain in place until the Minister of Environment releases his decision; 3. the matter was not the subject of a *Canadian Environmental Assessment Act* review; and 4. the issue to be heard at the hearing is: Has the Director properly considered the issue of water quality impacts in issuing the Approval to place the fill in the location specified in the Approval?

Cite as: *Covey et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Hal Willis* (20 January 2005), Appeal Nos. 03-014-019, 021, 027, 029-038, and 03-082-ID1 (A.E.A.B.).

Report and Recommendations - The Board held a Hearing on April 13, 2004 to hear from the Appellants (Ms. Margaret Baycroft (03-017), Ms. Margaret E. Medak (03-024), Ms. Laurie Miller (03-025), Mr. Randy K. Miller (03-026), Ms. Leah Wile (03-031), Ms. Dixie and Mr. Kevin Ingram (03-033), and Mr. William and Ms. Doreen Thomsen (03-037), Alberta Environment and Mr. Hal Willis. The Board heard arguments from the parties on whether Alberta Environment properly considered the water quality impacts on Dodd's Lake when issuing the Approval. After reviewing all of the evidence and submissions provided by the parties, the Board concluded the real concern of the Appellants was the current water quality in Dodd's Lake, which has no connection to the placement of fill allowed under the Approval. The Appellants also argued the Approval would interfere with their attempts to increase the water levels in the lake. The Board rejected this argument. The Board found that Alberta Environment had adequately considered the potential impacts on the water quality in Dodd's Lake. The Board issued a Report and Recommendations on May 12, 2004, to the Minister of Environment. On May 17, 2004, the Minister approved the recommendations.

Cite as: *Baycroft et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Hal Willis* (12 May 2004), Appeal Nos. 03-017, 024-026, 031, 033, and 03-037-R (A.E.A.B.)

Reconsideration Decision – The Appellants filed a reconsideration request with the Board regarding its decision. After reviewing the submissions from the parties, the Board issued a Decision on January 20, 2004, advising that there were no grounds to reconsider its previous decision, and the request was denied. The Appellants did not provide any new evidence that was not available at the time of the original decision and no error of law was identified. Therefore, the reconsideration request was denied.

Cite as: Reconsideration Decision: *Baycroft et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Hal Willis* (20 January 2005), Appeal Nos. 03-017, 024-026, 031, 033, and 03-037-RD (A.E.A.B.).

03-115

Appellant(s) – RD Flush Systems Ltd. and Mr. Jacob Martens, **Operator** – RD Flush Systems Ltd. and Mr. Jacob Martens, **Location** – Red Deer, **Type of Appeal** – Discontinuance of Proceedings

On July 31, 2003, the Board received a Notice of Appeal from RD Flush Systems Ltd. and Mr. Jacob Martens with respect to Enforcement Order No. EO-2003/03-CR issued to RD Flush Systems Ltd. and Mr. Jacob Martens for alleged contraventions of the *Environmental Protection and Enhancement Act* in relation to a truck washing facility in Red Deer, Alberta. The Board scheduled a hearing for October 29, 2003, however, prior to the hearing taking place, the Board received a request from the Appellants to adjourn the hearing as the parties were in discussions with a view toward

resolving the appeal. The Board granted the adjournment and the Appellants subsequently withdrew their appeal. As a result, the Board issued a Discontinuance of Proceedings on July 28, 2004, and closed its file.

Cite as: *RD Flush Systems Ltd. et al.* v. *Director, Central Region, Regional Services, Alberta Environment* (28 July 2004), Appeal No. 03-115-DOP (A.E.A.B.).

03-116 and 03-118-123

Appellant(s) – Mountain View Regional Water Services Commission, Mr. Gerald Oxtoby, City of Red Deer, Mr. Terry Little, Mr. Kelly Smith, Butte Action Committee and Mr. Mike Gallie, **Operator** – Capstone Energy, **Location** – near Red Deer, **Type of Appeal** – Active

Overview - Between August 15 and September 8, 2003, The Board received Notices of Appeal from the Mountain View Regional Water Services Commission, Mr. Gerald Oxtoby, the City of Red Deer, Mr. Terry Little, Mr. Kelly Smith, the Butte Action Committee, and Mr. Mike Gallie (collectively the "Appellants") with respect to Preliminary Certificate No. 00198509-00-00. The Preliminary Certificate was issued under the *Water Act* to Capstone Energy Ltd. which allows for the diversion of 328,500 m^3 of water annually from the Red Deer River by way of an infiltration well in the fluvial gravel formation in SW 4-36-1-W5M near Red Deer, Alberta, for the purpose of oilfield injection.

Preliminary Motions Decision - The Board held a preliminary meeting to determine if the parties that filed the appeals were directly affected; to determine the issues to be considered at the hearing of these appeals; to consider an application for interim costs; and to determine whether the appeal filed regarding the Director's decision to reject a statement of concern was properly before the Board. After reviewing the submissions and oral arguments provided by the parties, the Board found the Mountain View Regional Water Services Commission, Mr. Gerald Oxtoby, the City of Red Deer, Mr. Terry Little, and Mr. Kelly Smith directly affected. On February 11, 2004, the Board issued a Decision dismissing Mr. Mike Gallie's appeal as he was found not directly affected, but as he could provide unique, relevant evidence, the Board made him a party to the appeals. The Butte Action Committee withdrew its request to be included as a formal appellant, and instead decided to act as Mr. Gallie's agent. Upon reviewing the submissions of the parties on the issues to be considered at the hearing of these appeals, the Board identified five main areas that the parties wished to address: purpose, protection, volume, immediate neighbours, and policy considerations. With respect to the application for interim costs, based on the information that was before it, the Board decided not to grant interim costs, but invited any of the parties to reapply with additional information. (A subsequent application for interim costs was made and granted by the Board.) The appeal of the Director's decision not to accept a statement of concern did not have to be considered. It was one of Mr. Gallie's appeals, which was dismissed as Mr. Gallie was determined not to be directly affected.

Cite as: Preliminary Motions: *Mountain View Regional Water Services Commission et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Capstone Energy Ltd.* (11 February 2004), Appeal Nos. 03-116 and 03-118-123-ID1 (A.E.A.B.).

Intervenor Decision - The Board set the hearing for February 23, 24, and 25, 2004, and in response to the published notice of hearing, it received intervenor requests from the Red Deer Ratepayer Association, Ms. Dorene Rew, the Council of Canadians Red Deer Chapter, the Normandeau Cultural and Natural History Society, and Trout Unlimited. After reviewing the submissions from the parties, the Board issued an Intervenor Decision on January 24, 2005, advising the intervenors could participate in the hearing by providing written submissions and a ten minute presentation at the hearing.

Cite as: Intervenor Decision: *Mountain View Regional Water Services Commission et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Capstone Energy Ltd.* (24 January 2005), Appeal Nos. 03-116 and 03-118-121-ID2 (A.E.A.B.).

Report and Recommendations - The Appellants argue that fresh water is a scarce resource and it should not be used for oilfield injection, and believe that once fresh water is injected into the ground in this way, it is gone forever. In considering these appeals, the Board highlights the importance of fresh water; it is essential for human existence and it is a limited resource. The Board is also aware of the importance of the oil and gas industry in Alberta and the work they are undertaking to reduce their use of fresh water in keeping with the principles of sustainable development. The Board must balance the protection of our fresh water supplies with sustaining this essential element of our economy. In addition to the Appellants, the Board received intervenor requests from the Red Deer County Ratepayer Association, Ms. Dorene Rew, the Council of Canadians (Red Deer Chapter), the Normandeau Cultural and Natural History Society, and Trout Unlimited. The Board granted these groups intervenor status, and as a result, they provided evidence at the Hearing.

Based on all of the evidence received in these appeals (including evidence provided by the Intervenors at the Hearing), the Board issued a Report and Recommendations on April 26, 2004, concluding that the Preliminary Certificate and Proposed Licence should be upheld, but subject to a number of changes, including a reduction in the quantity of water and a staggered, shorter term for the licence. The Board encourages the government to provide direction through an oilfield injection policy that focuses on minimizing the use of fresh water regardless of its source. In the Board's view, if fresh water is going to be used for oilfield injection, the *Water Act* requires that an alternatives analysis be conducted, looking at the technical, economic, and regulatory feasibility of the alternatives and demonstrating that the fresh water will be used not only efficiently, but as the last option considered. In the Board's view, the amount of water allocated should be reduced to 600 m^3/day, for a total allocation of 219,000 m^3 annually. The reduction is consistent with evidence provided by Capstone that 150 m^3/day of produced water is possibly available elsewhere and that the amount of water to be used during the first year of the project is less than peek requirements. To encourage the use of alternate water sources, before the Proposed Licence is issued, Capstone should provide Alberta Environment with a report detailing a more complete investigation of alternate water sources. Subject to certain conditions detailed in this Report and Recommendations, the amount of water finally allocated in the Proposed Licence may be further decreased if alternate water sources are available. In all of the circumstance, even though past policies are contradictory and data is lacking, the Board believes Alberta Environment did its best to consider the effects of the Proposed Licence on other users, including recreational users, and on fish and wildlife. However, as water shortages have occurred in the last number of years, and to protect our aquatic ecosystem, an additional safety margin of 10 percent should be added to the minimum residual flow level. Further, to provide additional protection to other water users, a number of the clauses in the Proposed Licence should be varied to provide greater certainty, particularly in dealing with complaints. The Board recommends that the Minister order that the term of the Proposed Licence be staggered or phased with shorter terms. In this case, the initial term should be for a one year, and the second term should also be for one year, unless an applicable plan, guideline, or change in regulations provides otherwise. If no applicable plan, guideline or change in regulations is in place after the second one year term, any subsequent renewals of the Proposed Licence should not exceed a term of three years. Every renewal of the Proposed Licence should require that an alternatives assessment be conducted based on a list of criteria that should be part of the application process. The Minister approved the Board's recommendations on May 18, 2004.

Cite as: *Mountain View Regional Water Services Commission et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Capstone Energy* (26 April 2004), Appeal Nos. 03-116 and 03-118-121-R (A.E.A.B.).

Interim Costs - Mr. Gerald Oxtoby, Mr. Terry Little, Mr. Kelly Smith, and Mr. Mike Gallie all filed an application for interim costs in the amount of $7,854.00. Since the issues to be heard at the hearing are complex, and the costs are reasonable and directly associated with the preparation and presentation of their submissions, the Board granted costs in the amount of $5,979.00 to be payable to Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith by Capstone Energy Ltd.

Cite as: Interim Costs Decision: *Oxtoby et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Capstone Energy* (29 December 2004), Appeal Nos. 03-118, 120, 121 and 123-IC (A.E.A.B.).

As of March 31, 2005, the Board is reviewing a final costs application and drafting a decision to respond to preliminary motions with respect to these appeals.

03-117

Appellant(s) – Mr. Dennis and Ms. Barbara Hebner, **Operator** – EPCOR Generation Inc. and EPCOR Power Development Corporation, **Location** – near Genesee, **Type of Appeal** – Decision

On August 19, 2003, the Board received a Notice of Appeal from Mr. Dennis and Ms. Barbara Hebner with respect to Amending Approval No. 773-01-06 issued to EPCOR Generation Inc. and EPCOR Power Development Corporation Ltd., for the construction and operation of an emergency diesel generator at the Genesee thermal electric power plant located at 25-55-3-W5M near Genesee, Alberta. The Board held a preliminary meeting to determine whether the Appellants were directly affected; if their objection was with respect to land use; and whether they had the opportunity to participate in a hearing or review under an Act administered by the Alberta Energy and Utilities Board ("AEUB") at which all of the matters included in appeal were adequately dealt with. The Board issued a Decision on January 24, 2004, advising that the Appellants were not directly affected by the operation of the emergency generator, and the appeal was dismissed. The Board also found the concerns expressed by the Appellants were actually land use issues and not within the Board's jurisdiction. As the appeal was not properly before the Board, it did not consider whether the AEUB had considered the issues.

Cite as: *Hebner* v. *Director, Central Region, Regional Services, Alberta Environment* re: *EPCOR Generation Inc. and EPCOR Power Development Corporation Ltd.* (24 January 2005), Appeal No. 03-117-D (A.E.A.B.).

03-124-125

Appellant(s) – Imperial Oil Limited and Devon Estates Limited, **Operator** – Imperial Oil Limited and Devon Estates Limited, **Location** – Calgary, **Type of Appeal** – Active

On September 5, 2003, the Board received a Notice of Appeal from Imperial Oil Limited and Devon Estates Limited with respect to Environmental Protection Order Nos. EPO-2003/02-SR and EPO-2003/03-SR issued to Imperial Oil Limited and Devon Estates Limited in relation to the Lynnview Ridge residential subdivision in the City of Calgary, Alberta. Imperial Oil, Devon Estates, and Alberta Environment agreed to work to resolve their differences through consensual mediation. Therefore, the Board selected a mediator and arranged for a series of mediation meetings commencing on October 27, 2003. The Lynnview Ridge Residents Action Committee and the Calgary Health Region participated in some of the discussions with the mediator. As a result of an agreement reached between Imperial Oil, Devon Estates, and Alberta Environment on March 31, 2005, Alberta Environment cancelled the Environmental Protection Orders and Imperial Oil and Devon Estates withdrew their appeals.

As of March 31, 2005, the Board is in the process of issuing a Discontinuance of Proceedings and will close its file.

03-127-137

Appellant(s) – Mr. Gordon Volume, Mr. Gerry and Ms. Janet Whiteside, Ms. Barbara Petrie, Ms. Barbara Fehr, Mr. David Drader and Ms. Linda Vongrad, **Operator** – Word of Life Tabernacle, **Location** – Strathcona County, **Type of Appeal** – As listed below

Overview - On September 16 and 17, 2003, the Board received Notices of Appeal from Mr. Gordon Volume (03-127 and 03-128), Mr. Gerry and Ms. Janet Whiteside (03-129 and 03-130), Ms. Barbara Petrie (03-131 and 03-132), Ms. Barbara Fehr (03-133 and 03-134), and Ms. Linda Vongrad (03-136 and 03-137), appealing Approval No. 00198139-00 issued under the *Water Act* to the Word of Life Tabernacle for the construction of storm water management works at SW 5-52-22-W4M and SE 6-52-22-W4M in Strathcona County. Alberta Environment also issued Approval No. 198159-00-00 to the Operator for the construction, operation and reclamation of a storm outfall structure in SE 6-52-22-W4M.

Stay Decision - Five of the six Notices of Appeals also requested a Stay of the approvals. After reviewing the parties' submissions, the Board issued a Decision on November 19, 2004, granting the Stay applications, primarily since the Word of Life Tabernacle had placed the property up for sale.

Cite as: Stay Decision: *Volume et al.* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Word of Life Tabernacle* (19 November 2004), Appeal Nos. 03-127-137-ID1 (A.E.A.B.).

Decision - Prior to the hearing scheduled for January 23, 2004, the Word of Life Tabernacle notified the Board that it had sold the property to which the approvals pertained. The Board cancelled the hearing. The Board was subsequently notified that Alberta Environment did, in fact, cancel the approvals as requested by the Word of Life Tabernacle. After reviewing the arguments and issues presented by the parties, the Board issued a Decision on November 24, 2004, which stated the appeals were now moot and as a result, dismissed the appeals.

Cite as: *Volume et al.* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Word of Life Tabernacle* (24 November 2004), Appeal Nos. 03-127-137-D (A.E.A.B.).

03-139

Appellant(s) – Mr. Brent Kelland, Ms. Susan Scott, Ms. Colleen Praud and Ms. Jill Kelland, **Operator** – Hunt Power Company of Canada Inc., **Location** – Crossfield, **Type of Appeal** – Discontinuance of Proceedings

On October 7, 2003, the Board received a Notice of Appeal, dated October 6, 2003, from Mr. Brent Kelland, on behalf of Mr. Brent Kelland, Ms. Susan Scott, Ms. Colleen Praud and Ms. Jill Kelland with respect to Approval No. 192173-00-00 issued to Hunt Power Company of Canada Inc. The Approval was for the construction, operation, and reclamation of the Crossfield Thermal Electric Power Plant in Crossfield, Alberta. The Board scheduled a Hearing for this matter,

however, several weeks before the Hearing, the Appellants withdrew their appeal. As a result, the Board issued a Discontinuance of Proceedings on January 22, 2004, and closed its file.

Cite as: *Kelland et al.* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *Hunt Power Company of Canada Inc.* (22 January 2004), Appeal No. 03-139-DOP (A.E.A.B.).

03-140

Appellant(s) – Calpine Canada Resources, **Operator** – Calpine Canada Resources, **Location** – near Oyen, **Type of Appeal** – Discontinuance of Proceedings

On October 16, 2003, the Board received a Notice of Appeal from Calpine Canada Resources appealing the Inspector of Environment's refusal to issue a Reclamation Certificate to Calpine Canada Resources with respect to the Bowtex et al. Shibbald well, located at SE Sec. 4, Twp. 28, Rge. 03, W4M, near Oyen, Alberta. The Board held a mediation meeting in Oyen on June 9, 2004. As a result of the meeting, Calpine Canada Resources withdrew their appeal. On June 10, 2004 the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Calpine Canada Resources* v. *Inspector, Southern Region, Regional Services, Alberta Environment* (10 June 2004), Appeal No. 03-140-DOP (A.E.A.B).

03-141

Appellant(s) – Ms. Gwen Veer, **Operator** – Navigo Energy Inc., **Location** – near Vilna, **Type of Appeal** – Discontinuance of Proceedings

On October 21, 2003, the Board received a Notice of Appeal dated October 3, 2003, from Ms. Gwen Veer, land occupant appealing Reclamation Certificate No. NE 1-03-00169 issued to Navigo Energy Inc. for the surface of the land within TWP 61-13-W4M; Sec 18, NW 17. The Reclamation Certificate is in connection with or incidental to the access road held under LOC 962663 and Licence No. 0195079, near Vilna, Alberta. The Board received a letter from the Navigo Energy Inc. requesting an abeyance of the appeal until spring of 2004 to complete remedial work on the land. On June 9, 2004, the Board received a telephone call from the Appellant advising the work carried out by the Operator was satisfactory, and she would be withdrawing her appeal. As a result of withdrawing her appeal, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Veer* v. *Inspector, Public Lands, Sustainable Resource Development* re: *Navigo Energy Inc.* (10 June 2004), Appeal No. 03-141-DOP (A.E.A.B.).

03-142

Appellant(s) – Mr. Charlie and Ms. Pat Johnson, **Operator** – Murphy Oil Company Ltd., **Location** – near Cherry Point, **Type of Appeal** – Discontinuance of Proceedings

On October 23, 2004, the Board received a Notice of Appeal from Mr. Charlie and Ms. Pat Johnson with respect to Reclamation Certificate No. 00186627-00-00 issued to Murphy Oil Company Ltd. for the reclamation of the Murphy et al. BDYLKS 15-13-84-13-W6M well. The Board held a mediation in Cherry Point, Alberta on May 28, 2004, and following productive and detailed discussions, the parties reached an agreement and decided to withdraw their appeal. On May 31, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Johnson* v. *Inspector, Northern Region, Regional Services, Alberta Environment* re: *Murphy Oil Company Ltd.* (31 May 2004), Appeal No. 03-142-DOP (A.E.A.B.).

03-144

Appellant(s) – Mr. Gordon Petersen on behalf of the Castle-Crown Wilderness Coalition, **Operator** – Castle Mountain Resort Inc., **Location** – near Pincher Creek, **Type of Appeal** – Active

On November 13, 2003, the Board received a Notice of Appeal from Mr. Gordon Petersen on behalf of the Castle-Crown Wilderness Coalition with respect to Amending Approval No. 18777-01-01 issued to Castle Mountain Resort Inc. for the construction, operation and reclamation of a wastewater system for the Castle Mountain Resort, near Pincher Creek, Alberta. At the time the Appellant filed the Notice of Appeal with the Board, it had also filed a Judicial Review

action against Alberta Environment for not conducting an Environmental Impact Assessment (EIA) before it issued the Amending Approval to Castle Mountain Resort. The Appellant requested that the Board "Withhold Approval of Amendment until after CCWC's motion for the Judicial Review of the Minister's Decision not to order an E.I.A. has been resolved at Court of Queen's Bench." The Board received a request from Alberta Environment to dismiss the appeal because the Appellant was not directly affected. In response to this request, the Board scheduled a Preliminary Meeting for May 3, 2004 in order to obtain further information. The Board postponed the Preliminary Meeting as the Appellant was not available for the date scheduled. The Judicial Review was heard on November 24, 2003 and the courts issued their reasons on July 2, 2004. The courts determined that "...the decision of the Director to not order an E.I.A. is quashed and the matter is to be returned to the Director for determination in accordance with the legislation." Alberta Environment has filed an appeal with the Court of Appeal and that matter is outstanding. On May 20 and July 27, 2004, the Appellant wrote to the Board requesting that the Notice of Appeal be amended and that "...the remedy the Board should address is whether the approval should be quashed and if an injunction is required, particularly in light of Justice Kenny's decision...." The Board wrote to the parties and received submissions in relation to the effect that the Court of Queen's Bench decision has on the Notice of Appeal. The Appellant requested time to allow the parties an opportunity to determine if the matter could be resolved. The Board granted the extension, however, negotiations broke down and Castle Mountain Resorts requested the appeal be dismissed or schedule a hearing. Consequently, the Board advised that it wished to proceed to process the appeal, and requested written submissions on the following questions: Whether to dismiss the appeal for being moot, given the decision of Madame Justice Kenny in relation to the Judicial Review filed by the Appellant and given that the relief requested by the Appellant in their Notice of Appeal appears to have been met by the issuance of that decision; and whether the Appellant should be permitted to amend the Notice of Appeal? Those written submissions were received and the Board is reviewing.

As of March 31, 2005, this appeal is ongoing.

03-145 and 03-154

Appellant(s) – Mr. Klaus Jericho on behalf of himself and the Southern Alberta Environment Group, and Ms. Cheryl Bradley, **Operator** – St. Mary River Irrigation District, **Location** – near Lethbridge, **Type of Appeal** – Decision

On November 25, 2003, the Board received a Notice of Appeal from Mr. Klaus Jericho on behalf of himself and the Southern Alberta Environment Group and on January 6, 2004, received a Notice of Appeal from Ms. Cheryl Bradley with respect to Licence Amendment No. 00044590-00-01 issued under the *Water Act* to the St. Mary River Irrigation District near Lethbridge, Alberta. The amendment changes the purpose section of Licence No. 00044590-00-00 from "Irrigation" to "Irrigation District", and adds a number of clauses to the Licence to define Irrigation District purposes so as to allow the Operator to deliver water for municipal, agricultural, irrigation, commercial, industrial, management of fish, management of wildlife, habitat enhancement, and recreational purposes. The Board held a preliminary meeting to address the following issues: 1. the directly affected status of Mr. Jericho, the Southern Alberta Environmental Group, the Southern Alberta Environmental Group's members, and Ms. Bradley; 2. Ms. Bradley's late-filed appeal; 3. any further preliminary issues raised by the parties; 4. the issues to be heard at a future hearing of the appeals, should one be held; and 5. a Stay of the amendment to the water licence, as requested by the Appellants. After hearing the legal arguments and evidence from the parties at the preliminary meeting, the Board issued a Decision on November 4, 2004, advising that the Southern Alberta Environmental Group, its members, and Mr. Jericho were not directly affected by the amendment to the water licences and their appeal was dismissed. Further, Ms. Bradley's appeal was also dismissed as she was found not to be directly affected by the amendment to the water licence, she did not file a Statement of Concern, her Notice of Appeal was filed late, and no extenuating cirumstances existed to warrant extending the appeal period. As none of the appeals were properly before it, the Board did not address the issues to be considered at a potential hearing and did not address the Stay application.

Cite as: *Jericho et al.* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *St. Mary River Irrigation District* (4 November 2004), Appeal Nos. 03-145 and 03-154-D (A.E.A.B.).

03-147

Appellant(s) – Wood Buffalo First Nation, **Operator** – ConocoPhillips Canada Resources Corp., **Location** – near Fort McMurray, **Type of Appeal** – As listed below

Overview - On December 11, 2003, the Board received a Notice of Appeal from the Wood Buffalo First Nation ("Appellants" or "WBFN") appealing Approval No. 48263-00-00 issued to ConocoPhillips Canada Resources Corp. for

the construction, operation and reclamation of the Surmont enhanced recovery in-situ oil sands or heavy oil processing plant and oil production site near Fort McMurray, Alberta.

Decision - The Board conducted a Preliminary Meeting via written submissions on the issue of whether the WBFN had an opportunity to participate in a hearing before the Alberta Energy and Utilities Board ("AEUB") at which all matters included in the Notice of Appeal were adequately dealt with. On June 28, 2004, the Board issued a Decision that determined that the WBFN did receive notice of, and did participate in an AEUB review of the matter, and all issues in the Notice of Appeal were adequately dealt with by the AEUB.

Cite as: *Wood Buffalo First Nation* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *ConocoPhillips Canada Resources Corp.*, (28 June 2004), Appeal No. 03-147-D (A.E.A.B.)

Reconsideration Decision – The Wood Buffalo First Nation submitted a reconsideration request of the Board's decision. After reviewing the submissions from the parties from the original appeal and the reconsideration request, the Board issued a Decision on November 17, 2004, and determined that no new evidence was presented by the Wood Buffalo First Nation, and they did not raise any substantial error in law. Therefore, the reconsideration request was denied.

Cite as: Reconsideration Request: Wood Buffalo First Nation v. Director, Northern Region, Regional Services, Alberta Environment re: ConocoPhillips Canada Resources Corp. (17 November 2004), Appeal No. 03-147-RD (A.E.A.B.).

03-148

Appellant(s) – Wood Buffalo First Nation, **Operator** – OPTI Canada Inc./Nexen Canada Ltd., **Location** – near Fort McMurray, **Type of Appeal** – As listed below

Overview - On December 11, 2003, the Board received a Notice of Appeal from the Wood Buffalo First Nation ("Appellants" or "WBFN") appealing Approval No. 137467-00-00 issued to OPTI Canada Inc./Nexen Canada Ltd. for the construction, operation and reclamation of the Long Lake enhanced recovery in-situ oil sands or heavy oil processing plant and oil production site near Fort McMurray, Alberta.

Decision - The Board conducted a Preliminary Meeting via written submissions on the issue of whether the WBFN had an opportunity to participate in a hearing before the Alberta Energy and Utilities Board ("AEUB") at which all matters included in the Notice of Appeal were adequately dealt with. On June 28, 2004, the Board issued a Decision that determined that the WBFN did receive notice of, and did participate in an AEUB review of the matter, and all issues in the Notice of Appeal were adequately dealt with by the AEUB.

Cite as: *Wood Buffalo First Nation* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *OPTI Canada Inc./Nexen Canada Ltd.* (28 June 2004), Appeal No. 03-148 (A.E.A.B.)

Reconsideration Decision - The Wood Buffalo First Nation requested the Board reconsider its decision. After reviewing the submissions, the Board found the Appellant did not provide any compelling evidence or arguments for a reconsideration of the Board's decision, therefore, on November 17, 2004, the Board issued a Decision denying the request for a reconsideration.

Cite as: Reconsideration Request: *Wood Buffalo First Nation* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *OPTI Canada Inc./Nexen Canada Ltd.* (17 November 2004), Appeal No. 03-148-RD (A.E.A.B.).

Judicial Review – John Malcolm, on behalf of the Wood Buffalo First Nation, filed a judicial review in the Court of Queen's Bench on December 21, 2004, against numerous entities including the Environmental Appeals Board and its reconsideration decisions regarding OPTI Canada/Nexen Canada Ltd. and ConocoPhillips Canada Resources Corp. On March 10, 2005, the Courts dismissed the matter against the Environmental Appeals Board.

03-150, 03-151 and 03-152

Appellant(s) – Mr. Ben Gadd, **Operator** – Cardinal River Coals Ltd., **Location** – near Cadomin, **Type of Appeal** – As listed below

Overview - On December 19, 2003, the Board received a Notice of Appeal from Mr. Ben Gadd with respect to Approval No. 00188589-00-00 issued under the *Water Act* and the *Environmental Protection and Enhancement Act* Amending Approval Nos. 11767-01-02 and 46972-00-01 to Cardinal River Coals Ltd for the construction, operation and reclamation of a private haul road located near Cadomin, Alberta.

Preliminary Motions Decision - The Board determined that the private haul road is sufficiently different from the transportation corridor assessed in the joint Alberta Energy and Utilities Board and Canadian Environmental Assessment Agency review, and the Boards jurisdiction to hear these appeals is not removed by this joint review process. However, the issues will be limited to the differences in the environmental impacts between what was assessed in the joint Alberta Energy and Utilities Board and the Canadian Environmental Assessment Agency review and what now exists as the result of the new design of the haul road. In addition, Mr. Gadd raised a legal issue surrounding the status of the amending approval. On October 8, 2004, the Board issued a Decision outlining that the issues to be heard at the hearing are: 1. what effect will the new design of the haul road have on the movement and migration of wildlife in the area?; 2. what effect will the new design of the haul road have on public access to the wilderness areas and tourist sites on either side of the haul road?; 3. what effect will the new design of the haul road have on the local watershed?; 4. what effect will the new design of the haul road have on the noise and dust coming from the haul road?; and 5. what is the legal status of the approval given that pre-development activities under the previous approval were to be commenced by December 31, 2001, unless amended?

Cite as: Preliminary Motions: *Gadd* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Cardinal River Coals Ltd.* (8 October 2004), Appeal Nos. 03-150, 03-151 and 03-152-ID1 (A.E.A.B.).

Intervenor Decision - In response to the Board's notice of hearing scheduled for September 27 and 28, 2004, the Board received nine intervenor requests, representing 15 individuals and organizations. On October 12, 2004, the Board issued a Decision granting full party status to Mr. Allan Dane, Ms. Barb Higgins, Ms. Helen Ready, Ms. Janice Melnychuk, Mr. Edd Vass, Ms. Joyce Wilkins, and Mr. Roger Wilkins, who are all residents of Cadomin, Alberta (the "Cadomin Group"). The Board is of the view that residents of Cadomin will assist the Board in making its report and recommendations in this matter. Trout Unlimited, Yellowhead County, Alberta Fish and Game Association, United Mine Workers of America, the Town of Hinton, West Yellowhead Community Futures Development Corporation, and the Alberta Council for Sustainable Communities and the Environment (collectively the "Intervenors") were granted the right to participate through written submissions and a five minute oral presentation at the hearing. The Board is of the view that the Intervenors may have information that will assist the Board in making its report and recommendations in this matter. The intervenor request of Mr. Tom Stang was dismissed, as he does not live in the area.

Cite as: Intervenor Decision: *Gadd* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Cardinal River Coals Ltd.* (12 October 2004), Appeal Nos. 03-150, 03-151, and 03-152-ID2 (A.E.A.B.).

Interim Costs Decision - The Cadomin Group requested interim costs for the amount of $2,500.00. After reviewing the submissions for interim costs, the Board issued a Decision on December 21, 2004, denying the request even though the expenses claimed were not unreasonable. The Board advised that it is of the view that parties that appear before it are responsible for the costs associated with bringing their issues to the forefront. The Board advised the Cadomin Group that they are free to submit a final costs submission at the close of the hearing.

Cite as: Interim Costs Decision: *Gadd* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Cardinal River Coals Ltd.* (21 December 2004), Appeal Nos. 03-150, 03-151, and 03-152-ID3 (A.E.A.B.).

Report and Recommendations - Following a review of all of the evidence presented for the Hearing of these appeals, the Board determined that some aspects of the new design of the haul road negatively affect Mr. Gadd and the Cadomin residents in terms of their use and enjoyment of the local wilderness areas. However, the Board finds there are also environmental benefits to the haul road design relative to the original design, most notably with regard to the reduced impact on the local watershed and the improved control of human access to the wilderness areas to the west of the haul road, which should reduce illegal hunting in the area. Therefore, as long as the potential for wildlife mortality associated with the haul road can be minimized, the haul road should have a net benefit for the environment compared to the original design of the project. Therefore, the Board issued a Report and Recommendations to the Minister of Environment for his approval on February 24, 2005, recommending the Approval and the Amending Approval be

confirmed subject to a number of variations. Most of these variations relate to providing additional protection for wildlife. The Minister approved the Report and Recommendations on April 8, 2005.

Cite as: *Gadd* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Cardinal River Coals Ltd.* (24 February 2005), Appeal Nos. 03-150, 151 and 152-R (A.E.A.B.).

As of March 31, 2005, the appeal is ongoing as the Board is reviewing a cost application.

Judicial Review – On September 17, 2004, Cardinal River Coals Ltd. commenced an action in the Court of Queen's Bench of Alberta for a judicial review of the Board's decisions regarding the directly affected status of the Appellant, the stay, and the intervenors. Cardinal River Coals only pursued the judicial review of the standing of Mr. Ben Gadd and abandoned the other issues. The judicial review was heard by the Court of Queen's Bench on November 3, 2004. On November 4, 2004, the Court denied Cardinal River Coals' judicial review, finding the Board's determination that the Appellant was directly affected was correct, and in any event, the application by Cardinal River Coals was premature.

03-156

Appellant(s) – Gleneagles Investments Ltd. and Louson Investments Ltd., **Operator** – AES Calgary ULC, **Location** – near Chestermere, **Type of Appeal** – Decision

On February 6, 2004, the Board received a Notice of Appeal from Gleneagles Investments Ltd. and Louson Investments Inc. with respect to Amending Approval No. 00149007-00-01 issued to AES Calgary ULC authorizing an extension of time for the construction of the AES Calgary Thermal Electric Power Plant until December 31, 2004. The Amending Approval also allowed the Operator to apply for a further extension if construction had not been completed by December 31, 2004. The Board scheduled a hearing of the appeal via written submissions. However, prior to the commencement of the hearing, Alberta Environment cancelled the Amending Approval at the request of AES Calgary ULC. As a result, the Board issued a Decision on December 21, 2004, and dismissed the appeal for being moot.

Cite as: *Gleneagles Investments Ltd. and Louson Investments Ltd.* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *AES Calgary ULC* (21 December 2004), Appeal No. 03-156-D (A.E.A.B.).

03-157

Appellant(s) – Mr. Wayne and Ms. Wendy von Hollen, **Operator** – Mr. Albert and Ms. Sjoukje van der Meer, **Location** – near Rocky Mountain House, **Type of Appeal** – Report and Recommendations

On February 27, 2004, the Board received a Notice of Appeal from Mr. Wayne and Ms. Wendy von Hollen appealing Licence No. 00204431-00-00 issued under the *Water Act* to Mr. Albert and Ms. Sjoukje van der Meer for the diversion of 8,252 cubic metres of water annually from the well in NW 26-040-07-W5 for agricultural purposes (confined feeding operation) near Rocky Mountain House, Alberta. The Board held a mediation meeting in Rocky Mountain House on July 21, 2004, following which a resolution was reached by the Parties. On July 27, 2004, the Board issued a Report and Recommendations to the Minister of Environment recommending he accept the resolution. The Minister approved the resolution on August 4, 2004.

Cite as: *von Hollen* v. *Director, Central Region, Regional Services, Alberta Environment* re: *van der Meer* (27 July 2004), Appeal No. 03-157-R (A.E.A.B.)

03-158

Appellant(s) – Mr. Mike Richard, **Operator** – Devon ARL Corporation, **Location** – near Spirit River, **Type of Appeal** – Discontinuance of Proceedings

On March 10, 2004, the Board received a Notice of Appeal from a landowner, Mr. Mike Richard appealing Reclamation Certificate No. 00193712-00-00 issued to Devon ARL Corporation for the ARL Mirage 5-7-79-7 well near Spirit River, Alberta. The Board began processing the appeal, however, the Appellant decided to withdraw his appeal and pursue the complaint process available through the Department of Environment. As a result, the Board issued a Discontinuance of Proceedings on July 27, 2004 and closed its file.

Cite as: *Richard* v. *Inspector, Northern Region, Regional Services, Alberta Environment* re: *Devon ARL Corporation* (27 July 2004), Appeal No. 03-158-DOP (A.E.A.B.).

04-001 and 04-002
Appellant(s) – Mr. Gary Moses, **Operator** – Ducks Unlimited Canada, **Location** – near Vermilion, **Type of Appeal** – As listed below

Overview - On April 13, 2004, the Board received a Notice of Appeal from Mr. Gary Moses dated April 12, 2004, appealing Preliminary Certificate No. 00082881-00-00 issued under the *Water Act* to Ducks Unlimited Canada. The Preliminary Certificate allows Ducks Unlimited Canada to divert up to 30,300 cubic meters of water annually from Deer Creek into a dam in NE 02-053-06-W4 for habitat enhancement upon compliance with the conditions within the Preliminary Certificate; and *Water Act* Approval No. 00082878-00-00 authorizing the construction of a dam and related works on Deer Creek at NE 02-053-06-W4 and SE 02-053-06-W4, near Vermilion, Alberta.

Preliminary Motions Decision- Mr. Moses filed his appeal outside the 7-day timeline provided in the *Water Act*. The Board then established a written submission process to determine whether the Appellant's request for an extension of time to appeal should be granted. Upon review of the written submissions, the Board issued a Decision on November 29, 2004, advising that it would grant Mr. Moses' request for an extension of time to appeal, as Mr. Moses relied on the information provided in Alberta Environment's letter, stating he had 30 days to file an appeal.

Cite as: Preliminary Motion: *Moses* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Ducks Unlimited Canada* (29 November 2004), Appeal No. 04-001-ID1 (A.E.A.B.)

Report and Recommendations - The Board held a mediation meeting in Vermilion, Alberta on June 22, 2004, following which an agreement was reached by the parties. On June 28, 2004, the Board issued a Report and Recommendations recommending the Minister of Environment accept the agreement put forth by the parties. On June 30, 2004, the Minister approved the recommendation.

Cite as: *Moses* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Ducks Unlimited Canada* (28 June 2004), Appeal Nos. 04-001 and 04-002-R (A.E.A.B.).

04-003 and 04-004
Appellant(s) – Ms. Verna Loewen and Mr. Detlef Rottmerhusen, **Operator** – ARC Energy Resources Ltd., **Location** – near Valleyview, **Type of Appeal** – Report and Recommendations

On April 27, 2004, the Board received Notices of Appeal from Ms. Verna Loewen and Mr. Detlef Rottmerhusen with respect to Licence No. 00205559-00-00 issued under the *Water Act* to ARC Energy Resources Ltd. The Licence authorizes the diversion of 273,750 cubic metres of water annually from the wells in LSD 10-17-067-W5M, LSD 07-24-067-25-W5M, and LSD 06-20-067-24-W5M near Valleyview, Alberta for the purpose of industrial (injection) uses. The Board held a mediation meeting in Valleyview on November 8, 2004. As a result of the mediation, the participants reached an agreement that resulted in the allocation of water being reduced from 750 cubic metres per day to 650 cubic metres per day for a total annual allocation of 237,250 cubic metres. The agreement also requires that ARC conduct an investigation and prepare a report to be submitted to Alberta Environment into alternatives to the use of freshwater. Finally, the agreement also requests that ARC provide information about their operations to Ms. Loewen and Mr. Rottmerhusen. On November 10, 2004, the Board issued a Report and Recommendations recommending the Minister of Environment accept the resolution. On the same day, the Minister approved the recommendations.

Cite as: *Loewen and Rottmerhusen* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *ARC Energy Resources Ltd.* (10 November 2004), Appeal Nos. 04-003 and 04-004-R (A.E.A.B.).

04-005
Appellant(s) – Mr. Clarence Bohnet, **Operator** – Elkwater Park Golf Club, **Location** – near Medicine Hat, **Type of Appeal** – Discontinuance of Proceedings

On May 7, 2004, the Board received a Notice of Appeal from Mr. Clarence Bohnet appealing Preliminary Certificate No. 00206333-00-00 issued under the *Water Act* to Elkwater Park Golf Club. The Preliminary Certificate states that the Elkwater Park Golf Club will receive a licence to divert 10,649 cubic metres of water annually, for commercial purposes (golf course), from the well in SW 01-008-03-W4 with priority no. 2003-03-10-003 upon compliance with the conditions within the Certificate. The Board began processing the appeal, however, the Appellant withdrew his appeal. As a result, on October 6, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Bohnet* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *Elkwater Park Golf Club* (6 October 2004), Appeal No. 04-005-DOP (A.E.A.B.).

04-006 and 04-007

Appellant(s) – Mr. Bill and Ms. Linda (Margaret) Heintz, and Ms. E.K. Atkinson-Place and Ms. Marjorie Bencz, **Operator** – Jaydel Farms Ltd., **Location** – near Carrot Creek, **Type of Appeal** – Decision

On May 17, 2004, the Board received Notices of Appeal from Mr. Bill and Ms. Linda (Margaret) Heintz and Ms. Marjorie Bencz on behalf of herself and Ms. E.K. Atkinson-Place, appealing Licence No. 00199977-00-00 issued under the *Water Act* to Jaydel Farms Ltd.. The Licence authorizes the diversion of 14,693 cubic meters of water annually from the well in NE 30-53-13-W5M for agricultural purposes, a confined feeding operation, near Carrot Creek, Alberta. At issue with respect to the Notices of Appeal was whether or not all of the issues were adequately dealt with by the Natural Resources Conservation Board (NRCB) in its hearing of the confined feeding operation application under the *Agricultural Operation Practices Act*. After reviewing the submissions and the NRCB review decision, the Board determined that all the matters raised in the Notices of Appeal were adequately dealt with by the NRCB. Therefore, on March 31, 2005, the Board issued a Decision dismissing the appeals.

Cite as: *Heintz et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Jaydel Farms Ltd.* (31 March 2005), Appeal Nos. 04-006 and 04-007-D (A.E.A.B.).

04-008

Appellant(s) – Messrs. Dick Baker, William Wowniar, Dan McLean and Jamie Wilson, **Operator** – Messrs. Dick Baker, William Wowniar, Dan McLean and Jamie Wilson, **Location** – near Gibbons, **Type of Appeal** – Discontinuance of Proceedings

On May 18, 2004, the Board Received a Notice of Appeal from Mr. Dick Baker, filed on behalf of himself, Mr. William Wowniar, Mr. Dan McLean and Mr. Jamie Wilson appealing the refusal of Alberta Environment to issue a licence under the *Water Act*. The licence would allow the Appellants to draw water from the Sturgeon River at NW 6-56-22-W4M, to water trees, gardens and lawns in Casa Vista Estates, near Gibbons, Alberta. The Board held a mediation meeting in Edmonton on July 6, 2004, following which a resolution was reached by the parties. As a result of the resolution, the Appellants decided to withdraw their appeal, and on July 7, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Dick Baker et al.* v. *Director, Northern Region, Regional Services, Alberta Environment* (7 July 2004), Appeal No. 04-008-DOP (A.E.A.B.).

04-009, 04-011, and 04-012

Appellant(s) – Mr. Mike Northcott, **Operator** – Lafarge Canada Inc., **Location** – near Calihoo, **Type of Appeal** – Active

Stay Decision - On May 28, 2004, the Board received three Notices of Appeal and requests for a Stay from Mr. Mike Northcott with respect to Licence Nos. 00192603-00-00 and 00206791-00-00 issued under the *Water Act*, and Amending Approval No. 76893-00-01 issued under the *Environmental Protection and Enhancement Act* to Lafarge Canada Inc. in relation to a sand and gravel operation, commonly known as the Onoway Wash Plant, near Calihoo, Alberta. The wash plant has existed since the mid-1950s and was originally authorized by way of a water licence issued in 1957, which it still holds today. The wash plant is located next to and uses water from Kilini Creek, a tributary of the Sturgeon River, which is in the North Saskatchewan River Basin. On reviewing the submissions provided by the parties regarding the Stay application, the Board issued a Decision on January 11, 2005, advising that a Stay was not warranted, as there would be no irreparable harm to Mr. Northcott in the time the Board would require to hear the appeal, and the public interest did not support the granting of a Stay. Therefore, on January 11, 2005, the Board issued a Decision denying the stay request.

Cite as: Stay Decision: *Northcott* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Lafarge Canada Inc.* (11 January 2005), Appeal Nos. 04-009, 04-011, 04-012-ID1 (A.E.A.B.).

Report and Recommendations - The Board received submissions from the participants and held a hearing on November 5, 2004, in Edmonton, Alberta. At the hearing, Mr. Northcott expressed concern about his water well.

However, the evidence before the Board indicated no connection between the Wash Plant and his well. The Wash Plant's water source is principally surface water and to some extent groundwater from a sand and gravel formation. Mr. Northcott's well is located on the other side of the creek, hydrologically up gradient by about one mile, with its water source being a shale bedrock formation. Mr. Northcott also expressed concern with the design of the Wash Plant. He wanted the on-stream dam and impoundment removed and the creek returned to a "natural" condition. The Board concluded the design of the Wash Plant was not before the Board since it is an existing facility, licenced in 1957. Even if the Board had recommended canceling the new Licences (which it did not), it would do nothing to address these concerns and it would not return the creek to a "natural" condition. The environmental impacts are not appreciably different with or without the new Licences. The Wash Plant used the same water repeatedly; the new Licences were not for new water, but merely permission to use the same water over again a few more times. Now that the Wash Plant has been properly regulated and monitored with the new Licences and new Amending Approval, the Board expected the environmental concerns, including those of Mr. Northcott, would be better addressed. Mr. Northcott also raised concerns regarding the wording of the Licences and argued for additional monitoring and reporting conditions. The Board accepted a number of Mr. Northcott's arguments on this point. Therefore, on January 6, 2005 the Board issued a Report and Recommendations recommending to the Minister of Environment that the Licences and Amending Approval be confirmed, subject to a number of variations. The Board recommended that a number of conditions be reworded and a number of monitoring and reporting conditions be added. In particular, the Board recommended requiring Lafarge to prepare and submit a Summary Water Balance Report annually. The report should help Alberta Environment ensure that the Wash Plant remains in compliance with its Licences and should assist Lafarge in addressing the concerns of Mr. Northcott and the local community. The Minister approved the recommendations on February 28, 2005.

Cite as: *Northcott* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Lafarge Canada Inc.* (6 January 2005), Appeal Nos. 04-009, 04-011 and 04-012-R (A.E.A.B.).

As of March 31, 2005, the appeals are ongoing as the Board is reviewing application for costs.

04-010

Appellant(s) – Mr. William and Ms. Martha Kashmere, **Operator** – Jaydel Farms Ltd., **Location** – near Carrot Creek, **Type of Appeal** – Decision

On May 31, 2004, the Board received a Notice of Appeal from Mr. William and Ms. Martha Kashmere with respect to Licence No. 00199977-00-00 issued under the *Water Act* to Jaydel Farms Ltd. authorizing the diversion of 14,693 cubic metres of water annually from the well in NW 30-53-13-W5M for agricultural purposes (confined feeding operation) near Carrot Creek, Alberta. The Appellants filed their appeal past the prescribed time limit of 30 days and did not provide sufficient reasons for granting an extension. As a result, the Board issued a Decision on October 8, 2004, dismissing the appeal.

Cite as: *Kashmere* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Jaydel Farms Ltd.* (8 October 2004), Appeal No. 04-010-D (A.E.A.B.).

04-013

Appellant(s) – Husky Oil Operations Limited, **Operator** – Husky Oil Operations Limited, **Location** – near Provost, **Type of Appeal** – Report and Recommendations

On June 10, 2004, the Board received a Notice of Appeal from Husky Oil Operations Limited with respect to the refusal of Alberta Environment to issue a Reclamation Certificate to Husky Oil Operations Limited for the Renaissance 15D Provost 15-36-39-3-W4M well near Provost, Alberta. The Board held a mediation meeting in Edmonton on August 26, 2004, following which a resolution was reached by the parties. On August 31, 2004, the Board issued a Report and Recommendations to the Minister recommending he accept the resolution. On September 23, 2004, the Minister accepted the recommendations.

Cite as: *Husky Oil Operations Limited* v. *Inspector, Central Region, Regional Services, Alberta Environment* (31 August 2004), Appeal No. 04-013-R (A.E.A.B.).

04-014 – 04-017

Appellant(s) – Husky Oil Operations Limited, **Operator** – Husky Oil Operations Limited, **Location** – near Provost, **Type of Appeal** – Discontinuance of Proceedings

On June 10, 2004, the Board received a Notices of Appeal from Husky Oil Operations Limited ("Husky Oil") with respect to the refusal of Alberta Environment to issue reclamation certificates for the Pinnacle PCP Provost 13-19-38-9-W4M well, the Renaissance 6B Border 6-24-41-5-W4M well, the Husky Lloydminster 15-13-41-4-W4M well, and the Renaissance 15C Provost 15-13-41-4-W4M well near Provost, Alberta. The Board held a mediation meeting in Edmonton on August 26, 2004, and as a result, Alberta Environment and Husky Oil agreed to continue discussions. Further to the discussions, Alberta Environment issued reclamation certificates for the Pinnacle PCP Provost 13-19-38-9-W4M well, the Renaissance 6B Border 6-24-41-5-W4M well, the Husky Lloydminster 15-13-52-1-W4M well, and the Renaissance 15C Provost 15-13-41-4-W4M well. The Appellant subsequently withdrew the appeals and on November 25, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Husky Oil Operation Limited* v. *Inspector, Central Region, Regional Services, Alberta Environment* (25 November 2004), Appeal Nos. 04-014-04-017-DOP (A.E.A.B.).

04-018
Appellant(s) – Talisman Energy Inc. **Operator** – Talisman Energy Inc., **Location** – Leduc, **Type of Appeal** – Decision

On June 2, 2004, the Board received a Notice of Appeal from the Talisman Energy Inc. with respect to the refusal of Alberta Environment to issue a Reclamation Certificate to the Appellant for the Ashland Pembina well located at 10-11-48-3-W5M in Leduc County, Alberta. The appeal was filed past the prescribed time limit of 30 days and the Appellant did not respond to the Board's request for a rebuttal submission. As the Appellant did not provide sufficient reasons for granting an extension for filing the Notice of Appeal and did not respond to the Board's request for additional information, the Board issued a Decision on August 23, 2004 to dismiss the appeal.

Cite as: *Talisman Energy Inc.* v. *Inspector, Central Region, Regional Services, Alberta Environment* (23 August 2004), Appeal No. 04-018-D (A.E.A.B.).

04-019 and 04-020
Appellant(s) – Dr. Barry Nault and Dr. Victoria Mitchell, **Operator** – Town of Canmore, **Location** – Canmore, **Type of Appeal** – As listed below

Overview - On June 16, 2004, the Board received Notices of Appeal from Dr. Barrie Nault and Dr. Victoria Mitchell, with respect to Approval No. 00206647-00-00 issued under the *Water Act* to the Town of Canmore for the construction of a boat launch on the Bow River in Canmore, Alberta.

Preliminary Motions Decision - After reviewing the submissions, the Board determined that Dr. Nault and Dr. Mitchell were directly affected, as their property is approximately 120 metres from the proposed boat launch site and their use and enjoyment of their property includes watching wildlife in the area. As a result, the Board issued a Decision on November 29, 2004, granting a Stay until the Minister of Environment has made his decision regarding the Approval. If the appeals are successful and the boat launch was built prior to the Board making the decision, there would be additional detrimental effects to the environment if the project had to be removed.

Cite as: Preliminary Motions: *Nault and Mitchell* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *Town of Canmore* (29 November 2004), Appeal Nos. 04-019 and 04-020-ID1 (A.E.A.B.).

Intervenor Decision - In response to the notice of hearing, the Board received 45 intervenor requests (from 69 individuals and 3 organizations). The Board received submissions regarding the admissibility of the intervenor requests. Many of the issues raised by the intervenors were not within the Board's jurisdiction. However, the Board issued a Decision on November 16, 2004, which allowed 54 individual intervenors and 3 organizations to provide written submissions, as all of them reside in or based out of Canmore. The remaining intervenor requests (from 15 individuals) were denied as they did not live in the Canmore area or the requests were filed late.

Cite as: Intervenor Decision: *Nault and Mitchell* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *Town of Canmore* (16 November 2004), Appeal Nos. 04-019 and 04-020-ID2 (A.E.A.B.).

Report and Recommendations - Drs. Nault and Mitchell live near the proposed boat launch. Dr. Nault requested a Stay of the Approval, which was granted by the Board, pending the hearing of the appeals. In response to the notice of

the hearing, the Board received 45 intervenor requests (from 69 individuals and three organizations). The Board allowed 54 of the individual intervenors and the three organizations to provide written submissions to be considered at the hearing. The remaining intervenor requests (from 15 individuals) were denied as they do not live in the area of the project or their requests were filed late. Many of the issues raised by Dr. Nault, Dr. Mitchell, and the intervenors were not within the Board's jurisdiction and were either municipal planning matters or matters within the jurisdiction of Transport Canada or the federal Department of Fisheries and Oceans. Most notably Dr. Nault, Dr. Mitchell, and the intervenors were concerned that the boat launch would encourage motorized boats, particularly jet boats, to use this part of the Bow River. The Board confirmed it did not have jurisdiction to prevent the use of motorized boats in the river as that is the jurisdiction of Transport Canada. The Board's jurisdiction was limited to the construction of the proposed boat launch and not its intended use. The Board also confirmed that Alberta Environment did not have the jurisdiction to prevent the use of motorized boats in the river, and that Alberta Environment's jurisdiction was also limited to the construction of the proposed boat launch and not its intended use. As a result, on August 17, 2004, the Board issued a Report and Recommendations to the Minister of Environment which determined that the construction of the boat launch would not have a detrimental effect on the environment, including the Bow River. The Board recommended that the Minister confirm the Approval, with a clause added to clarify that the width of each of the two boat launch ramps is not to exceed 4 metres. The addition of the clause is required to avoid any uncertainty in interpreting the Approval, which could have resulted from an error in the Town's application for the Approval. On August 24, 2004, the Minister approved the recommendations.

Cite as: *Nault and Mitchell* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *Town of Canmore* (17 August 2004), Appeal Nos. 04-019 and 04-020-R (A.E.A.B.).

Costs Decision -The Board received a request for final costs from Drs. Nault and Mitchell for a total of $12,520.91. The Board determined the Appellants have a responsibility, as do all Albertans, to pay at least some costs involved in appearing before the Board. The Board found that not all of the costs claimed related directly to the identified issues and other costs were not directly and primarily related to presenting their evidence before the Board. As a result, the Board issued a Decision on November 17, 2004, denying all costs claimed.

Cite as: Costs Decision: *Nault and Mitchell* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *Town of Canmore* (17 November 2004), Appeal Nos. 04-019 and 04-020-CD (A.E.A.B.).

04-021, 022, 023, 025 and 031

Appellant(s) – Mr. John Bergquist, Ms. Lou Anne Bergquist, Mr. Robert Bergquist, Mr. Allen Bergquist, Kelly Bergquist, Ms. Jennie Farthing, Mr. Travis Setter, Ms. Janice Setter, Ms. Margaret Hughes, Mr. Darrell Hughes, Mr. Wayne LeBlanc and Ms. Helen LeBlanc, **Operator** – Paragon Pork Management Ltd., **Location** – near Penhold, **Type of Appeal** – Discontinuance of Proceedings

On June 24 and 25, 2004, the Board received Notices of Appeal from Mr. John Bergquist, Ms. Lou Anne Bergquist, Mr. Robert Bergquist, Mr. Allen Bergquist, Kelly Bergquist, Ms. Jennie Farthing, Mr. Travis Setter, Ms. Janice Setter, Ms. Margaret Hughes, Mr. Darrell Hughes, Mr. Wayne LeBlanc and Ms. Helen LeBlanc. The Notices of Appeal were with respect to Licence No. 00204958-00-00 issued under the *Water Act* to Paragon Pork Management Ltd. authorizing the diversion of 26,830 cubic metres of water annually from the well in NW 33-035-22-W4M for agricultural purposes (confined feeding operation) near Penhold, Alberta. The Board held a mediation meeting on August 19, 2004, in Innisfail, Alberta following which a resolution was agreed to by the parties, and the Appellants subsequently withdrew their appeals. As a result, the Board issued a Discontinuance of Proceedings on August 23, 2004, and closed its file.

Cite as: *Bergquist et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Paragon Pork Management Ltd.* (23 August 2004), Appeal Nos. 04-021, 022, 023, 025 and 031-DOP (A.E.A.B.).

04-024, 04-026-030 and 04-035-040

Appellant(s) – Mr. Willem and Ms. Mieke Spaans, Mr. Andre and Ms. Trish Lema, Mr. Glen Blaylock, Mr Leo and Ms. Valerie Belanger, Mr. Robert and Ms. Kathryn Lema, and Mr. Gary and Ms. Doris Labrecque, **Operator** – Yellowhead Aggregates and Lafarge Canada Inc., **Location** – near St. Albert, **Type of Appeal** – Active

Overview - On June 23 and 24, 2004, the Board received Notices of Appeal and requests for a Stay from Mr. Willem and Ms. Mieke Spaans, Mr. Andre and Ms. Trish Lema, Mr. Glen Blaylock, Mr Leo and Ms. Valerie Belanger, Mr. Robert and Ms. Kathryn Lema, and Mr. Gary and Ms. Doris Labrecque with respect to Amending Approval No. 15125-01-01 isssued to Lafarge Canada Inc. for the opening up, operation, and reclamation of a pit on SW 16-54-26-W4M, and Amending Approval No. 0023878-00-02 issued under the *Water Act* to Yellowhead Aggregates for the diversion of water at SW 16-54-26-W4M near St. Albert, Alberta.

Stay Decision - The Board received submissions regarding the Stay and the directly affected status of the Appellants. On January 11, 2005, the Board issued a Decision advising the Appellants are directly affected as they live within one kilometre of the project site. However, the Board denied the Stay request as the Appellants would not suffer irreparable harm by the companies operating under the terms and conditions of the approvals in the time required to hear the appeals. As the balance of convenience did not favour one party over the other, the status quo remained in effect and the Stay was denied.

Cite as: Stay Decision: *Spaans et al.* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Yellowhead Aggregates and Lafarge Canada Inc.* (11 January 2005), Appeal Nos. 04-024, 04-026-030, and 04-035-040-ID1 (A.E.A.B.).

The Board advised the parties that it was of the view that the appeals may be successfully mediated and requested they provide available dates for mediation. The Board held a mediation meeting in Edmonton, Alberta on November 19, 2004.

As of March 31, 2005, the appeals are ongoing.

04-032 and 04-033
Appellant(s) – View Mont Estates Ltd., **Operator** – View Mont Estates Ltd., **Location** – near Chauvin, **Type of Appeal** – Discontinuance of Proceedings

On July 7, 2004, the Board received two Notices of Appeal from Mr. G. Arnold Armstrong, filed on behalf of View Mont Estates Ltd. appealing the decision of Alberta Environment to refuse to issue a Reclamation Certificate to View Mont Estates Ltd. with respect to the View Mont et al. Chauvs 15D-22-42-1 W4M well near Chauvin, Alberta. The Board began processing the appeal, however, on July 19, 2004, received a letter from the Appellant withdrawing the appeal. As a result, the Board issued a Discontinuance of Proceedings on July 28, 2004, and closed its file.

Cite as: *View Mont Estates Ltd.* v. *Inspector, Central Region, Regional Services, Alberta Environment* (28 July 2004), Appeal Nos. 04-032 and 04-033-DOP (A.E.A.B.).

04-034
Appellant(s) – Messrs. Robert, William, Donald and James McCracken, **Operator** – Keland Holdings Ltd., **Location** – near Manning, **Type of Appeal** – Report and Recommendations

On July 8, 2004, the Board received a Notice of Appeal from Messrs. Robert, William, James, and Donald McCracken, with respect to Approval No. 00206965-00-00 issued under the *Water Act* to Keland Holdings Ltd. authorizing the development of an agricultural enhancement project near Manning, Alberta. A hearing was held in Grande Prairie, Alberta on November 5, 2004. After hearing the evidence and arguments of the parties, the Board did not believe the Appellants would suffer any adverse affects from the works allowed under the Approval, and in fact, the works may reduce the incidence and severity of flooding on the Appellants' lands. As a result, the Board issued a Report and Recommendations on November 17, 2004, that determined the Approval was properly issued, and recommended the Minister confirm the Approval as issued. The Minister approved the recommendations on November 19, 2004.

Cite as: *McCracken* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Keland Holdings Ltd.* (17 November 2004), Appeal No. 04-034-R (A.E.A.B.).

04-041 and 04-042
Appellant(s) – Talisman Energy Inc. **Operator** – Talisman Energy Inc., **Location** – near Brazeau County, **Type of Appeal** – Discontinuance of Proceedings

On July 13, 2004, the Board received Notices of Appeal from Talisman Energy Inc. with respect to the refusal of Alberta Environment to issue a Reclamation Certificate to Talisman Energy Inc. for the Talisman Pembina 8-21-47-4W5 well and the Decalta B South Pembina 16-25-47-4W5M well, near Brazeau County, Alberta. The Board held a mediation meeting in Edmonton on October 4, 2004. As a result of the mediation, the Appellant withdrew their appeals. On October 5, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Talisman Energy Inc.* v. *Director, Central Region, Regional Services, Alberta Environment* (5 October 2004), Appeal Nos. 04-041 and 04-042-DOP (A.E.A.B.).

04-043, 04-044, 04-045 and 04-046
Appellant(s) – Laebon Developments Ltd. and WNM Engineering Ltd., **Operator** – Laebon Developments Ltd. and WNM Engineering Ltd., **Location** – near Red Deer, **Type of Appeal** – Decision

On July 20, 2004, the Board received Notices of Appeal from Laebon Developments Ltd. and WNM Engineering Ltd. regarding Administrative Penalty No. 04/08-AP-CR-04-11 issued under the *Environmental Protection and Enhancement Act* and WA-04/04/03-AP-CR-04/04 issued under the *Water Act* to Laebon Developments Ltd. and WNM Engineering Ltd. The Administrative Penalties were issued for alleged contraventions in relation to a waterworks system for the River County Estates subdivision, near Red Deer, Alberta. The Board scheduled a hearing for October 14, 2004, however, Laebon Developments Ltd., WNM Engineering Ltd., and Alberta Environment reached an agreement reducing the *Water Act* Administrative Penalty from $5,000 to $3,000, and reducing the Administrative Penalty from $19,500 to $10,500. On November 3, 2003, the Board issued a Decision agreeing to the agreement.

Cite as: *Laebon Developments Ltd. and WNM Engineering Ltd.* v. *Director, Central Region, Regional Services, Alberta Environment* (3 November 2004), Appeal Nos. 04-043, 04-044, 04-045 and 04-046-D (A.E.A.B.)

04-047
Appellant(s) – Mr. Myron and Ms. Tracey Fawcett, **Operator** – Calpine Canada Resources Company (now Viking Energy Trust), **Location** – near Consort, **Type of Appeal** – Active

On July 21, 2004, the Board received a Notice of Appeal from Myron and Tracey Fawcett, the landowners, appealing Reclamation Certificate No. 00190505-00-00 issued to Calpine Canada Resources Company (now Viking Energy Trust) for the surface of land held by Calpine Canada Resources Company within SE Sec. 13 Tp. 035 Rge. 04 W4M in connection with or incidental to the Encal Provost 7-13-35-7 well near Consort, Alberta.

As of March 31, 2005, this appeal is ongoing.

04-048 and 04-049
Appellant(s) – Slave River Exploration Ltd., **Operator** – Slave River Exploration, **Location** – near Fort Smith, **Type of Appeal** – Decision

On July 21, 2004, the Board received Notices of Appeal from Slave River Exploration Ltd. appealing the cancellation of Reclamation Certificate Nos. NW2-03-00226 and NW2-03-00227 by Alberta Environment held by Slave River Exploration Ltd. in connection with the wellsite and access road at 30-86-11-W5M near Fort Smith, Alberta. As the appeals were filed past the 30-day legislated time frame, the Board requested the Appellant provide reasons why an extension should be granted. After reviewing the response, the Board determined no special circumstances existed to warrant an extension to file the appeals. As a result, the Board issued a Decision on September 16, 2004, dismissing the appeals.

Cite as: *Slave River Exploration Ltd.* v. *Director, Sustainable Resource Development* (16 September 2004), Appeal Nos. 04-048 and 04-049-D (A.E.A.B.).

04-050
Appellant(s) – Mr. Merlin Tessman, **Operator** –Mr. Robert John Armitage, **Location** – near Kinsella, **Type of Appeal** – Discontinuance of Proceedings

On July 28, 2004, the Board received a Notice of Appeal from Mr. Merlin Tessman dated July 25, 2004, appealing Licence No. 00210248-00-00 issued under the *Water Act* to Mr. Robert John Armitage authorizing the diversion of 9,955 cubic metres of water annually from the well in NE 05-047-10-W4 for agricultural purposes (confined feeding operation) near Kinsella, Alberta. The Board held a mediation meeting in Kinsella on November 2, 2004. As a result of the mediation, the Appellant withdrew his appeal and on November 3, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Tessman* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Robert John Armitage* (3 November 2004), Appeal No. 04-050-DOP (A.E.A.B).

04-051
Appellant(s) – Hutterian Brethren of Neu Muehl, **Operator** – Hutterian Brethren of Neu Muehl, **Location** – near Drumheller, **Type of Appeal** – Discontinuance of Proceedings

On July 29, 2004, the Board received a Notice of Appeal from the Hutterian Brethren of Neu Muehl with respect to Alberta Environment's refusal to issue a *Water Act* Licence to the Operator to divert water and operating works at SE 12-029-17-W4, near Drumheller, Alberta. The Board began processing the appeal, however, the Appellant withdrew the appeal. As a result, on October 7, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Hutterian Brethren of Neu Muehl* v. *Director, Central Region, Regional Services, Alberta Environment* (7 October 2004), Appeal No. 04-051-DOP (A.E.A.B.).

04-052
Appellant(s) – Mr. Donald Armitage, **Operator** – Mr. Robert John Armitage, **Location** – near Kinsella, **Type of Appeal** – Discontinuance of Proceedings

On August 26, 2004, the Board received a Notice of Appeal from Mr. Donald Armitage dated August 25, 2004 with respect to Licence No. 00210248-00-00 issued under the *Water Act* to Mr. Robert John Armitage. The Licence authorizes the diversion of 9,955 cubic metres of water annually from the well in NE 05-047-10-W4 for agricultural purposes (confined feeding operation) near Kinsella, Alberta. The Board began processing the appeal, however the Appellant withdrew his appeal. As a result, the Board issued a Discontinuance of Proceedings on October 4, 2004, and closed its file.

Cite as: *Armitage* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Robert John Armitage* (4 October 2004), Appeal No. 04-052-DOP (A.E.A.B.).

04-053 and 04-054
Appellant(s) – Ms. Barbara A. Higgins, **Operator** – Cardinal River Coals Ltd., **Location** – near Hinton, **Type of Appeal** – As listed below

Overview - On September 3, 2004, the Board received a Notice of Appeal from Ms. Barbara A. Higgins with respect to Approval No. 00205213 issued under the *Water Act* and Amending Approval No. 46972-00-02 issued under the *Environmental Protection and Enhancement Act* to Cardinal River Coals Ltd. The *Water Act* Approval was for the placement, construction, operation, maintenance, and removal of works within the fenceline of the Cheviot Creek Pit for the purpose of the diversion and management of water, construction of rock drains and sedimentation facilities, and the development of an end-pit lake and fisheries enhancement ponds on a tributary of the McLeod River, near Hinton, Alberta. The Amending Approval was for the opening up, construction, operation and reclamation of the Cheviot Creek coal mine.

Decision - The Appellant filed the appeal of the *Water Act* approval past the 7-day time frame and the Board requested that Ms. Higgins provide reasons why an extension should be granted. After reviewing the response, the Board determined that no special circumstances existed to warrant an extension and on October 27, 2004, issued a Decision dismissing the appeal.

Cite as: *Higgins* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Cardinal River Coals Ltd.* (27 October 2004), Appeal No. 04-053-D (A.E.A.B.).

Reconsideration Decision - Ms. Higgins filed a reconsideration request of the Board's decision. After reviewing the parties' submissions regarding the request, the Board issued a Decision on January 11, 2005, which determined that she did not provide any new evidence that was not available at the time of the original decision or identified any error in law. As a result, the Board denied the Appellant's reconsideration request.

Cite as: Reconsideration Decision: *Higgins* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Cardinal River Coals Ltd.* (11 January 2005), Appeal No. 04-053-RD (A.E.A.B.).

The appeal of the Amending Approval (05-054) issued under the *Environmental Protection and Enhancement Act* is ongoing.

04-055

Appellant(s) – Mr. Doug Emerson, **Operator** – Ducks Unlimited Canada, **Location** – near Eaglesham, **Type of Appeal** – Discontinuance of Proceedings

On September 27, 2004, the Board received a Notice of Appeal from Mr. Doug Emerson with respect to Approval No. 00200318-00-00 issued to Ducks Unlimited Canada authorizing the construction of a wetland stabilization project on an unnamed water body at SW 05-078-25-W5, near Eaglesham, Alberta. The Board began processing the appeal, however, the Appellant withdrew his appeal. As a result, on November 3, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Emerson* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Ducks Unlimited Canada* (3 November 2004), Appeal No. 04-055-DOP (A.E.A.B.).

04-056

Appellant(s) – Mr. Kevin Armitage, **Operator** – Mr. Don Armitage, **Location** – near Kinsella, **Type of Appeal** – Discontinuance of Proceedings

On September 27, 2004, the Board received a Notice of Appeal from Mr. Kevin Armitage appealing Approval No. 00210258-00-00 issued to Mr. Don Armitage authorizing the drainage of groundwater from the gravel pit at NW 11-047-11-W4M near Kinsella, Alberta. The Board held a mediation in Camrose, Alberta on December 8, 2004. As a result of the mediation, the Appellant withdrew his appeal and on December 9, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Kevin Armitage* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Don Armitage* (9 December 2004), Appeal No. 04-056-DOP (A.E.A.B.).

04-057

Appellant(s) – Byram Industrial Services Ltd., **Operator** – Wasteworks Inc., **Location** – near Carrot Creek, **Type of Appeal** – Active

On October 21, 2004, the Board received a Notice of Appeal from Byram Industrial Services Ltd. appealing Approval No. 203668-00-00 issued to Wasteworks Inc. The Approval authorized the construction, operation and reclamation of a facility consisting of a landfill where more than 10,000 tonnes per year of waste is disposed of and a fixed facility where waste is treated by biological processes, near Carrot Creek, Alberta. The facility is commonly known as the Tower Road Waste Management Facility. The Board scheduled a Preliminary Meeting to deal with the following preliminary issues: 1. The directly affected status of Byram Industrial Services Ltd; 2. The effect of the Director not accepting the Statement of Concern of Byram Industrial Services Ltd; 3. The issues to be considered at a hearing, should one be held; and 4. Mootness, in relation to some or all of the grounds for appeal.

As of March 31, 2005, the appeal is ongoing.

04-058

Appellant(s) – Mr. Hubert Honeycotte, **Operator** – County of Thorhild No. 7, **Location** – near Boyle, **Type of Appeal** – Report and Recommendations

On November 7, 2004, the Board received a Notice of Appeal from Mr. Hubert Honeycotte with respect to Licence No. 00199667-00-00 issued under the *Water Act* to the County of Thorhild No. 7, authorizing the diversion of 91,000 cubic metres of water annually from Long Lake in NW 23-063-19-W4M for commercial purposes (snowmaking) at the Long Lake ski hill near Boyle, Alberta. The Board held a mediation meeting in Boyle on January 13, 2005, following which an agreement was reached by the parties. As a result, the Board issued a Report and Recommendations on January 18, 2005, recommending the Minister of Environment accept the agreement. On January 25, 2005, the Minister approved the recommendations.

Cite as: *Honeycotte* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *County of Thorhill No. 7* (18 January 2005), Appeal No. 04-058-R (A.E.A.B.).

04-059-04-071

Appellant(s) – Mr. David and Ms. Carol Johnson, Mr. Dave and Ms. Ann Davidson, Mr. William Davidson, Mr. Terry and Ms. Marlene Capton, Mr. Gary Evans, Mr. Wayne Wilkie, Mr. Chester Black, Mr. Harold D. Waldron and Ms. Jean Riess, Mr. Kevin Sosnowski, Mr. Darrell and Ms. Karen Davidson, Ms. Dale Brawn, Mr. Ron and Ms. Linda Taylor, and Mr. Haldon and Ms. Marion Waldron, **Operator** – Barbra Wiens-Eltink (Immink Farms), **Location** – near Clive, **Type of Appeal** – Report and Recommendations

Between November 8 and 22, 2004, the Board received Notices of Appeal from Mr. David and Ms. Carol Johnson, Mr. Dave and Ms. Ann Davidson, Mr. William Davidson, Mr. Terry and Ms. Marlene Capton, Mr. Gary Evans, Mr. Wayne Wilkie, Mr. Chester Black, Mr. Harold D. Waldron and Ms. Jean Riess, Mr. Kevin Sosnowski, Mr. Darrell and Ms. Karen Davidson, Ms. Dale Brawn, Mr. Ron and Ms. Linda Taylor, and Mr. Haldon and Ms. Marion Waldron (collectively the "Appellants"). The Notices of Appeal were with respect to Licence No. 00207490-00-00 issued under the *Water Act* to Ms. Barbra Wiens-Eltink, operating as Immink Farms, authorizing the diversion of 9,642 cubic metres of water annually from the well in NW 29-38-24-W4M for agricultural purposes (stock water for a confined feeding operation) near Clive, Alberta. The Board held a mediation meeting in Red Deer, Alberta on February 24, 2005, following which an agreement was reached by the participants. On February 28, 2005, the Board issued a Report and Recommendations recommending the Minister of Environment accept the resolution. On March 7, 2005, the Minister accepted the recommendations.

Cite as: *Johnson et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Barbra Wiens-Eltink (Immink Farms)* (28 February 2005), Appeal Nos. 04-059-04-071-R (A.E.A.B.).

04-072

Appellant(s) – Mr. Geoffrey and Ms. Dorothea Broadbent, **Operator** – Wolf Creek Golf Resort Ltd., **Location** – near Ponoka, **Type of Appeal** – Discontinuance of Proceedings

On November 25, 2004, the Board received a Notice of Appeal from Mr. Geoffrey and Ms. Dorothea Broadbent (the "Appellants") with respect to Licence No. 00191827-00-00 issued under the *Water Act* to Wolf Creek Golf Resort Ltd. authorizing the diversion of 34,537 cubic metres of water annually from the well in SE 03-042-26-W4M for commercial purposes (golf course), near Ponoka, Albera. The Board held a mediation meeting in Ponoka on February 17, 2005. As a result of the mediation meeting, a resolution was reached between the participants and the Appellants withdrew their appeal. On February 22, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Broadbent* v. *Director, Central Region, Regional Services, Alberta Environment* re: *Wolf Creek Resort Ltd.* (22 February 2005), Appeal No. 04-072-DOP (A.E.A.B.).

04-073

Appellant(s) – Mr. Ken Smulski, J. Smulski Estate, S.V. Farms of Gibbons, and 267554 Alberta Ltd., **Operator** – Agrium Products Inc., **Location** – near Redwater, **Type of Appeal** – Decision

On December 17, 2004, the Board received a Notice of Appeal from Mr. Ken Smulski, on behalf of himself, the J. Smulski Estate, S.V. Farms of Gibbons, and 267554 Alberta Ltd. with respect to Approval No. 00212558-00-00 issued under the *Water Act* to Agrium Products Inc. (Agrium). The Approval authorized the construction, operation, management, and maintenance of modifications to the surface drainage and northern extension of the phosphogypsum storage area of Agrium's fertilizer manufacturing facility near Redwater, Alberta. Mr. Smulski filed his appeal after the 7-day time limit for filing appeals of approvals issued under the *Water Act*. He argued the *Water Act* approval was in addition to the approval issued under the *Environmental Protection and Enhancement Act* for the same project, and therefore,

he should have the same 30-day period in which to file his appeal. The Board disagreed with this analysis, and on March 18, 2005, issued a Decision dismissing the appeal with respect to the *Water Act* approval for being filed out of time, as no special circumstances existed to warrant an extension of the appeal deadline.

Cite as: *Smulski* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Agrium Products Inc.* (18 March 2005), Appeal No. 04-073-D (A.E.A.B.).

04-074-082

Appellant(s) – Mr. Ken Smulski (on behalf of the estate of J. Smulski, S.V. Half Diamond Ranch, 267554 Alberta Ltd., and S.V.Farms Ltd.), Mr. Ward and Ms. Connie Sawatzky, Ms. Tia, Mr. Ken and Ms. Alysha Bartlett, Mr. Barry and Ms. Sharon Ziegeman, Mr. Percival and Ms. Martha Henkelman, Mr. Erich and Ms. Evelyn Marquardt, Ms. Cheryl Henkelman, Mr. Brent and Ms. Cindy Marquardt, and Ms. Sylvia and Ms. Heather Garon, **Operator** – Agrium Products Inc., **Location** – near Redwater, **Type of Appeal** – Decision

On November 19, 2004, Alberta Environment issued an Amending Approval under the *Environment Protection and Enhancement Act* to Agrium Products Inc. (Agrium), with respect to a fertilizer manufacturing plant, near Redwater, Alberta. The Amending Approval allowed for the expansion of the fertilizer manufacturing plant's phosphogypsum storage area. Phosphogypsum, commonly referred to as gypsum, is a by-product of manufacturing phosphorus-based fertilizers and is usually stored in a controlled area adjacent to the plant. On December 17, 2004, the Board received nine Notices of Appeal from Mr. Ken Smulski (on behalf of the estate of J. Smulski, S.V. Half Diamond Ranch, 267554 Alberta Ltd., and S.V.Farms Ltd.), Mr. Ward and Ms. Connie Sawatzky, Ms. Tia, Mr. Ken and Ms. Alysha Bartlett, Mr. Barry and Ms. Sharon Ziegeman, Mr. Percival and Ms. Martha Henkelman, Mr. Erich and Ms. Evelyn Marquardt, Ms. Cheryl Henkelman, Mr. Brent and Ms. Cindy Marquardt, and Ms. Sylvia and Ms. Heather Garon regarding the Amending Approval. The Board held a preliminary meeting to determine whether the issues included in the appeals had been adequately dealt with by the Natural Resources Conservation Board (the NRCB), and to determine the issues to be heard at a hearing of these appeals should one be held. The Board's legislation requires that the Board dismiss an appeal if the person filing the appeal had an opportunity to participate in an NRCB hearing (full participation was conceded in this case) at which all of the issues raised in the appeal were adequately dealt with. After hearing from the parties, the Board issued a Decision on April 29, 2005, concluding that all of the persons who filed the Notices of Appeal participated in an NRCB hearing at which all of the matters included in the Notices of Appeal were adequately dealt with. Thus, all of the appeals were dismissed and the Board did not have to determine the issues to be heard at a hearing. The Board noted that there appeared to be renewed interest in Agrium and the local residents working together to better address a number of the concerns relating to the phosphogypsum storage area. The Board strongly encouraged this, particularly with the various studies to be conducted pursuant to the Amending Approval. Further, the Board noted that some of the concerns raised in these appeals were based on a broader land-use conflict in the area that is not within the Board's jurisdiction. The Board encouraged all of the stakeholders to work cooperatively to address this conflict.

Cite as: *Smulski et al.* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Agrium Products Inc.* (29 April 2005), Appeal Nos. 04-074-082-D (A.E.A.B.).

04-083

Appellant(s) – Talisman Energy Inc., **Operator** – Talisman Energy Inc., **Location** – near Fairview, **Type of Appeal** – Discontinuance of Proceedings

On December 23, 2004, the Board received a Notice of Appeal from Talisman Energy Inc. (the "Appellant) with respect to Alberta Environment's refusal to issue a reclamation certificate to Talisman Energy Inc. for the Talisman 102 Dunvegan 16-2-81-4 W6 well near Fairview, Alberta. The Board held a mediation meeting in Calgary, Alberta on March 14, 2005. As a result of the mediation meeting, a resolution was reached between the parties and the Appellant withdrew the appeal. On March 18, 2005 the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Talisman Energy Inc.* v. *Director, Northern Region, Regional Services, Alberta Environment* (18 March 2005), Appeal No. 04-083-DOP (A.E.A.B.).

04-084

Appellant(s) – Whitecourt Power Limited Partnership, **Operator** – Whitecourt Power Limited Partnership, **Location** – Woodlands County, **Type of Appeal** – Discontinuance of Proceedings

On January 27, 2005, the Board received a Notice of Appeal from Whitecourt Power Limited Partnership with respect to Approval No. 291-01-00 issued to Whitecourt Power Limited Partnership authorizing the construction, operation and reclamation of the Whitecourt Thermal Electric Power Plant in Woodlands County. While the Board was processing the appeal, Alberta Environment and Whitecourt Power Limited Partnership requested a one-year abeyance of the appeal.

As of March 31, 2005, the appeal is ongoing.

04-085

Appellant(s) – Mr. Irvin R. Macklin, **Operator** – Talisman Energy Inc., **Location** – near Wanham, Alberta, **Type of Appeal** – Active

On February 1, 2005, the Board received a Notice of Appeal from Mr. Irvin R. Macklin with respect to Reclamation Certificate No. 00193575-00-00 issued to Talisman Energy Inc. for the Talisman et al. Belloy 5-31-78-2 well, near Wanham, Alberta.

As of March 31, 2005, the appeal is ongoing.

04-086-89, 04-092-121

Appellant(s) – Mr. Rod Shaigec, Mr. Fred Shaigec, Ms. Helen Shaigec, Ms. Cheyanne Lovli, Ms. Jane Anne Smith, Mr. Andrew Smith, Mr. Conrad Robichaud, Mr. Wade Thordarson, Ms. Lori Robichaud, Mr. Steve Zelych, Ms. Lynne Eleniak, Mr. Stan Chruszcz, Mr. Charles Arlinghaus, Ms. Nancy Arlinghaus, Mr. Don Erechuk, Ms. Misty Erechuk, Ms. Susan Erechuk, Mr. Don Erechuk, Mr. Pat Steinke, Mr. Richard Hewson, Mr. Shawn Chruszcz, Ms. Wendy Chruszcz, Mr. Paul Boyd, Mr. Wayne Eleniak, Ms. Alice Risselada-Hogan, Mr. Ron Gray, Ms. Judy Monea, Mr. Dwight Monea, Ms. Valeen Duncan, Ms. Denise Locher, Mr. Dominique Locher, Mr. Doug Hawkins, Ms. Shelly J. Hawkins, and Ms. Sue Allen, **Operator** – EPCOR Power Development Corporation, **Location** – Leduc, **Type of Appeal** – n/a

Between February 9 to 18, 2005, the Board received Notices of Appeal from Mr. Rod Shaigec, Mr. Fred Shaigec, Ms. Helen Shaigec, Ms. Cheyanne Lovli, Ms. Jane Anne Smith, Mr. Andrew Smith, Mr. Conrad Robichaud, Mr. Wade Thordarson, Ms. Lori Robichaud, Mr. Steve Zelych, Ms. Lynne Eleniak, Mr. Stan Chruszcz, Mr. Charles Arlinghaus, Ms. Nancy Arlinghaus, Mr. Don Erechuk, Ms. Misty Erechuk, Ms. Susan Erechuk, Mr. Don Erechuk, Mr. Pat Steinke, Mr. Richard Hewson, Mr. Shawn Chruszcz, Ms. Wendy Chruszcz, Mr. Paul Boyd, Mr. Wayne Eleniak, Ms. Alice Risselada-Hogan, Mr. Ron Gray, Ms. Judy Monea, Mr. Dwight Monea, Ms. Valeen Duncan, Ms. Denise Locher, Mr. Dominique Locher, Mr. Doug Hawkins, Ms. Shelly J. Hawkins, and Ms. Sue Allen. The Notices of Appeal were with respect to EPCOR's Application No. 012-773 filed with Alberta Environment for the Genesee Power Plant in the County of Leduc, Alberta. On February 18, 2005, Alberta Environment wrote to the Board advising that Alberta Environment had yet to issue a decision regarding the merits of EPCOR's approval renewal application, and "any appeal at this juncture is premature." On March 1, 2005, the Board wrote to the individuals who submitted Notices of Appeal to advise that since Alberta Environment had not yet made a decision on the application, the appeals were filed prematurely. The Board also noted that the Notices of Appeal appealed the decision of Alberta Environment to refuse to accept the letters as statements of concern in relation to EPCOR's application, and advised that Alberta Environment's decision to deny statements of concern could not be directly appealed to the Board, unless an appeal is properly before the Board. As a result, the Board dismissed the appeals via its letter of March 1, 2005, as they were not properly before the Board.

Cite as: *Shaigec et al.* v. *Director, Central Region, Regional Services, Alberta Environment* re: *EPCOR Power Development Corporation* (1 March 2005), Appeal Nos. 04-086-89, 04-092-121 (A.E.A.B.).

04-090

Appellant(s) – Mr. Ted Ganske, **Operator** – CCS Inc., **Location** – Bonnyville, **Type of Appeal** – Active

On February 10, 2005, the Board received a Notice of Appeal from Mr. Ted Ganske with respect to Approval No. 204916-00-00 issued to CCS Inc., authorizing the construction, operation and reclamation of the Bonnyville Waste Management Facility (Class II Industrial Landfill).

As of March 31, 2005, the appeal is ongoing.

04-091
Appellant(s) – Ms. Anne Wasson, **Operator** – McDonald Subdivision Development Phase III, **Location** – County of Bighorn #8, **Type of Appeal** – Active

On February 10, 2005, the Board received a Notice of Appeal from Ms. Anne Wasson with respect to Alberta Enviornment's decision to refuse to issue a Water Management Order at the request of the Appellant for the McDonald Subdivision Development Phase III in the County of Bighorn #8 in Alberta. The matter concerns the impact of the subdivision on the existing Licence No. 17157. The subdivision, consisting of more than 25 lots in less than one half of a quarter section, is upstream from the Appellant's source of water. The Appellant is concerned that the final stage and the cumulative effect of the subdivision will interfere with and adversely impact the priority of her licence.

As of March 31, 2005, the appeal is ongoing.

04-122
Appellant(s) – Canadian Natural Resources Limited, **Operator** – Canadian Natural Resources Limited, **Location** – near Lindbergh, **Type of Appeal** – Active

On February 24, 2005, the Board received a Notice of Appeal from Canadian Natural Resouces Limited, appealing the Director of Alberta Environment's refusal to issue a reclamation certificate to Canadian Natural Resources Limited for the CNRL et al Lindbergh 2-8-57-7-W4M well near Lindbergh, Alberta.

As of March 31, 2005, the appeal is ongoing.

04-123-124
Appellant(s) – Tartan Energy Inc., **Operator** – Tartan Energy Inc., **Location** – Sturgeon County, **Type of Appeal** – Active

On March 23, 2005, the Board received a Notice of Appeal for Environmental Protection Order ("EPO") 2005/03-NR and EPO 2005/04 issued to Tartan Energy Inc. The Appellant also submitted an application for a stay of the EPOs.

As of March 31, 2005, the appeals are ongoing.

Appendix B

PARTIES TO THE APPEALS

Water Act Approvals, Licences, Preliminary Certificates

04-001	Ducks Unlimited/Water Act Approval 00082878-00-00 (Gary Moses, Moses Farm)
04-002	Ducks Unlimited/Water Act Preliminary Certificate 00082881-00-00 (Gary Moses, Moses Farm)
04-003	ARC Energy Resources Ltd./Water Act Licence 00205559-00-00 (Verna Loewen)
04-004	ARC Energy Resources Ltd./Water Act Licence 00205559-00-00 (Detlef Rottmerhusen)
04-005	Elkwater Park Golf Club/Water Act Preliminary Certificate 00206333-00-00 (Clarence Bohnet)
04-006	Jaydel Farms Ltd./Water Act Licence 00199977-00-00 (E. K. Atkinson-Place and Marjorie Bencz)
04-007	Jaydel Farms Ltd./Water Act Licence 00199977-00-00 (Bill and Linda (Margaret) Heintz)
04-008	Dick Baker, William Wowniar, Dan McLean and Jamie Wilson/Water Act Licence Application for NW6-56-22-W4
04-009	Lafarge Canada Inc./Water Act Licence 192603-00-00 (Mike Northcott)
04-010	Jaydel Farms Ltd./Water Act Licence 00199977-00-00 (William and Martha Kashmere)
04-011	Lafarge Canada Inc./Water Act Licence 00206791-00-00 (Mike Northcott)
04-019	Town of Canmore/Water Act Approval 00206657-00-00 (Barrie R. Nault)
04-020	Town of Canmore/Water Act Approval 00206657-00-00 (Victoria Mitchell)
04-021	Paragon Pork Management Ltd./Water Act Licence 00204958-00-00 (John and Lou Anne Bergquist)
04-022	Paragon Pork Management Ltd./Water Act Licence 00204958-00-00 (Jenny Farthing)
04-023	Paragon Pork Management Ltd./Water Act Licence 00204958-00-00 (Travis and Janice Setter)
04-024	Yellowhead Aggregates/Water Act Amending Approval 0023878-00-02 (Willem and Mieke Spaans)
04-025	Paragon Pork Management Ltd./Water Act Licence 00204958-00-00 (Margaret and Darrell Hughes)
04-026	Yellowhead Aggregates/Water Act Amending Approval 0023878-00-02 (Andre and Trish Lema)
04-027	Yellowhead Aggregates/Water Act Amending Approval 0023878-00-02 (Glen D. Blaylock)
04-028	Yellowhead Aggregates/Water Act Amending Approval 0023878-00-02 (Leo and Valerie Belanger)
04-029	Yellowhead Aggregates/Water Act Amending Approval 0023878-00-02 (Robert and Kathryn Lema)
04-030	Yellowhead Aggregates/Water Act Amending Approval 0023878-00-02 (Gary and Doris Labrecque)
04-031	Paragon Pork Management Ltd./Water Act Licence 00204958-00-00 (Wayne and Helen LeBlanc)
04-034	Keland Holdings Ltd./Water Act Approval 00206965-00-00 (Robert McCracken and Brothers-William, James and Donald McCracken)
04-050	Robert John Armitage/Water Act Licence 00210248-00-00 (Merlin Tessman)
04-051	Edward Waldner, Neu Muehl Colony/Water Act Licence Application for SE 12-029-17-W4
04-052	Robert John Armitage/Water Act Licence 00210248-00-00 (Donald Armitage)

04-053 Cardinal River Coals Ltd./Water Act Approval 00205213-00-00 (Barbara Higgins)

04-055 Ducks Unlimited Canada/Water Act Approval 00200318-00-00 (Doug Emerson)

04-056 Don Armitage/Water Act Approval 00210258-00-00 (Kevin Armitage)

04-058 County of Thorhild No. 7/Water Act Licence 00199667-00-00 (Hubert Honeycotte)

04-059 Barbra Wiens-Eeltink o/a Immink Farms/Water Act Licence 00197224-00-00(David and Carol Johnson)

04-060 Barbra Wiens-Eeltink o/a Immink Farms /Water Act Licence 00197224-00-00 (Dave and Ann Davidson)

04-061 Barbra Wiens-Eeltink o/a Immink Farms /Water Act Licence 00197224-00-00 (William Davidson)

04-062 Barbra Wiens-Eeltink o/a Immink Farms /Water Act Licence 00197224-00-00 (Terry and Marlene Capton)

04-063 Barbra Wiens-Eeltink o/a Immink Farms /Water Act Licence 00197224-00-00 (Kevin Sosnowski)

04-064 Barbra Wiens-Eeltink o/a Immink Farms /Water Act Licence 00197224-00-00 (Gary Evans)

04-065 Barbra Wiens-Eeltink o/a Immink Farms /Water Act Licence 00197224-00-00 (Darrell and Karen Davidson)

04-066 Barbra Wiens-Eeltink o/a Immink Farms /Water Act Licence 00197224-00-00 (Wayne Wilkie)

04-067 Barbra Wiens-Eeltink o/a Immink Farms /Water Act Licence 00197224-00-00 (Dale Brawn)

04-068 Barbra Wiens-Eeltink o/a Immink Farms /Water Act Licence 00197224-00-00 (Chester Black)

04-069 Barbra Wiens-Eeltink o/a Immink Farms /Water Act Licence 00197224-00-00 (Ron and Linda Taylor)

04-070 Barbra Wiens-Eeltink o/a Immink Farms /Water Act Licence 00197224-00-00 (Harold Waldron)

04-071 Barbra Wiens-Eeltink o/a Immink Farms /Water Act Licence 00197224-00-00 (Haldon and Marion Waldron)

04-072 Wolf Creek Golf Resort Ltd./Water Act Licence 00191827-00-00 (Geoffrey and Dorothea Broadbent)

04-073 Agrium Products Inc./Water Act Approval 00212558-00-00 (Ken Smulski)

04-091 Nancy and David McDonald, McDonald Subdivision Development Phase III, MD of Bighorn No. 8/Water Act Application 2707-01NE9(6)R (William and Anne Wasson, Water Act Licence 17157)

Environmental Protection and Enhancement Act (EPEA) Approvals

04-012 Lafarge Canada Inc./EPEA Amending Approval 76893-00-01 (Mike Northcott)

04-035 Lafarge Canada Inc./EPEA Amending Approval 15125-01-01(Willem and Mieke Spaans)

04-036 Lafarge Canada Inc./EPEA Amending Approval 15125-01-01 (Glen D. Blaylock)

04-037 Lafarge Canada Inc./EPEA Amending Approval 15125-01-01 (Leo and Valerie Belanger)

04-038 Lafarge Canada Inc./EPEA Amending Approval 15125-01-01 (Robert and Kathryn Lema)

04-039 Lafarge Canada Inc./EPEA Amending Approval 15125-01-01 (Andre and Trish Lema)

04-040 Lafarge Canada Inc./EPEA Amending Approval 15125-01-01 (Gary and Doris Laurecque)

04-054 Cardinal River Coals Ltd./EPEA Amending Approval 46972-00-02 (Barbara Higgins)

04-057 Wasteworks Inc./EPEA Approval 203668-00-00 ((Byram Industrial Services Ltd.)

04-074 Agrium Products Inc./EPEA Approval 210-01-11 (Ken Smulski)

04-075 Agrium Products Inc./EPEA Approval 210-01-11 (Ward and Connie Sawatzky)

04-076 Agrium Products Inc./EPEA Approval 210-01-11 (Tia, Ken and Alysh Bartlett)

04-077	Agrium Products Inc./EPEA Approval 210-01-11 (Barry and Sharon Ziegeman)
04-078	Agrium Products Inc./EPEA Approval 210-01-11 (Percivil and Martha Henkelman)
04-079	Agrium Products Inc./EPEA Approval 210-01-11 (Erich and Evelyn Marquardt)
04-080	Agrium Products Inc./EPEA Approval 210-01-11 (Cheryl Henkelman)
04-081	Agrium Products Inc./EPEA Approval 210-01-11(Brent and Cindy Marquardt)
04-082	Agrium Products Inc./EPEA Approval 210-01-11 (Sylvia and Heather Garon)
04-084	Whitecourt Power Limited Partnership/EPEA Approval 291-01-00
04-086	EPCOR Power Development Corporation/EPEA Application 012-773 (Rod Shaigec)
04-087	EPCOR Power Development Corporation /EPEA Application 012-773 (Fred Shaigec)
04-088	EPCOR Power Development Corporation /EPEA Application 012-773 (Helen Shaigec)
04-089	EPCOR Power Development Corporation /EPEA Application 012-773 (Cheyanne Lovli)
04-090	CCS Inc./EPEA Approval 204916-00-00 (Ted Ganske)
04-092	EPCOR Power Development Corporation/EPEA Application 012-773 (Jane Smith)
04-093	EPCOR Power Development Corporation/EPEA Application 012-773 (Andrew Smith)
04-094	EPCOR Power Development Corporation/EPEA Application 012-773 (Conrad Robichaud)
04-095	EPCOR Power Development Corporation/EPEA Application 012-773 (Wade Thordarson)
04-096	EPCOR Power Development Corporation/EPEA Application 012-773 (Lori Robichaud)
04-097	EPCOR Power Development Corporation/EPEA Application 012-773 (Steve Zelych)
04-098	EPCOR Power Development Corporation/EPEA Application 012-773 (Lynne Eleniak)
04-099	EPCOR Power Development Corporation/EPEA Application 012-773 (Stan Chruszcz)
04-100	EPCOR Power Development Corporation/EPEA Application 012-773 (Charles Arlinghaus)
04-101	EPCOR Power Development Corporation/EPEA Application 012-773 (Nancy Arlinghaus)
04-102	EPCOR Power Development Corporation/EPEA Application 012-773 (Don Erechuk)
04-103	EPCOR Power Development Corporation/EPEA Application 012-773(Misty Erechuk)
04-104	EPCOR Power Development Corporation/EPEA Application 012-773(Susan Erechuk)
04-105	EPCOR Power Development Corporation/EPEA Application 012-773 (D. Erechuk)
04-106	EPCOR Power Development Corporation/EPEA Application 012-773 (Patrick Steinke)
04-107	EPCOR Power Development Corporation/EPEA Application 012-773(Richard Hewson)
04-108	EPCOR Power Development Corporation/EPEA Application 012-773 (Shawn Chruszcz)
04-109	EPCOR Power Development Corporation/EPEA Application 012-773(Wendy Chruszcz)
04-110	EPCOR Power Development Corporation/EPEA Application 012-773 (Paul Boyd)
04-111	EPCOR Power Development Corporation/EPEA Application 012-773 (Wayne Eleniak)
04-112	EPCOR Power Development Corporation/EPEA Application 012-773 (Alice Risselada-Hogan)
04-113	EPCOR Power Development Corporation/EPEA Application 012-773 (Ron Gray)
04-114	EPCOR Power Development Corporation/EPEA Application 012-773 (Judy Monea)
04-115	EPCOR Power Development Corporation/EPEA Application 012-773 (Dwight Monea)
04-116	EPCOR Power Development Corporation/EPEA Application 012-773 (Valeen Duncan)
04-117	EPCOR Power Development Corporation/EPEA Application 012-773 (Denise Locher)
04-118	EPCOR Power Development Corporation/EPEA Application 012-773 (Dominque Locher)
04-119	EPCOR Power Development Corporation/EPEA Application 012-773 (Doug Hawkins)
04-120	EPCOR Power Development Corporation/EPEA Application 012-773 (Shelly Hawkins)

04-121 EPCOR Power Development Corporation/EPEA Application 012-773 (Sue Allen)

EPEA Reclamation Certificates

04-013 Husky Oil Operations Ltd./Application for Reclamation Certificate for the Renaissance 15D Provost 15-36-39-3-W4 Well

04-014 Husky Oil Operations Ltd./Application for Reclamation Certificate for the Pinnacle PCP Provost 13-19-38-9-W4 Well

04-015 Husky Oil Operations Ltd./Application for Reclamation Certificate for the Renaissance 6B Border 6-24-41-5 W4 Well

04-016 Husky Oil Operations Ltd./Application for Reclamation Certificate for the Husky Lloydminster 15-13-52-1 W4 Well

04-017 Husky Oil Operations Ltd./Application for Reclamation Certificate for the Renaissance 15C Provost 15-13-41-4-W4 Well

04-018 Talisman Energy Inc./Application for Reclamation Certificate for the Ashland Pembina 10-11-48-3-W5 Well

04-032 View Mont Estates Ltd. /Application for Reclamation Certificate for the Viewmont et al Chauvs 15D-22-42-1 Well

04-033 View Mont Estates Ltd. /Application for Reclamation Certificate for the Viewmont et al Chauvs 1B-27-42-1 Well

04-041 Talisman Energy Inc./Application for Reclamation Certificate for the Talisman Pembina 8-21-47-4W5M Well

04-042 Talisman Energy Inc./Application for Reclamation Certificate for the Decalta B South Pembina 16-25-47-4W5M Well

04-047 Calpine Canada Resources Co. (now Viking Energy Trust)/Reclamation Certificate 00190505-00-00 (Myron and Tracey Fawcett)

04-048 Slave River Exploration Ltd./Cancellation of Reclamation Certificate NW2-03-00226

04-049 Slave River Exploration Ltd./Cancellation of Reclamation Certificate NW2-03-00227

04-083 Talisman Energy Inc./Application for Reclamation Certificate for the Talisman 102 Dunvegan 16-2-81-4-W6 Well

04-085 Talisman Energy Inc./EPEA Reclamation Certificate 00193575-00-00 (Irvin Macklin)

04-122 Canadian Natural Resources Limited/Application for Reclamation Certificate for the CNRL et al. Lindbergh 2-8-57-7-W4M well

EPEA Enforcement Actions

04-123 Tartan Energy Inc./EPEA Environmental Protection Order EPO 2005/03-NR

04-124 Tartan Energy Inc./EPEA Environmental Protection Order EPO 2005/04-NR

04-043 Laebon Developments Ltd./EPEA Administrative Penalty EPEA-04/08-AP-CR-04-11

04-044 WMN Engineering Ltd./EPEA Administrative Penalty EPEA-04/08-AP-CR-04-11

Water Act Enforcement Actions

04-045 Laebon Developments Ltd./Water Act Administrative Penalty WA-04/04/03-AP-CR-04/04

04-046 WMN Engineering Ltd./Water Act Administrative Penalty WA-04/04/03-AP-CR-04/04

Appendix C

PRESENTATIONS

May 6, 2004 Marian Fluker (Senior Research Officer) Edmonton, Alberta	Alberta Aboriginal Lands Association - Environmental Assessment/Intervention Workshop Criteria for an Environmental Hearing
May 11, 2004 Gilbert Van Nes (General Counsel)	Municipal Government Board ADR and the Environmental Appeal Board Edmonton, Alberta
August 9, 2004 Gilbert Van Nes (General Counsel)	Japanese Exchange Students – University of Alberta Board Office, Edmonton, Alberta
August 16, 2004 William Tilleman (Chair)	Canadian Bar Association (National Conference) Practicing Before Administrative Tribunals Winnipeg, Manitoba
September 9, 2004 Ted Fisher (Chair)	Canadian Bar Association, Environmental Law Section The Environmental Appeals Board Edmonton, Alberta
September 21, 2004 Gilbert Van Nes (General Counsel)	Japanese Exchange Students – University of Alberta Board Office, Edmonton, Alberta
September 22, 2004 Gilbert Van Nes (General Counsel)	University of Calgary, Environmental Law Common Law Remedies Calgary, Alberta
September 30, 2004 Gilbert Van Nes (General Counsel)	Provincial ADR Network Conference, Municipal Affairs So you want to build ADR into your program? Edmonton, Alberta
September 30, 2004 Gilbert Van Nes (General Counsel)	MBA Program, University of Alberta Boards and Tribunals Edmonton, Alberta
October 6, 2004 Gilbert Van Nes (General Counsel)	University of Calgary, Environmental Law Alternative Dispute Resolution Calgary, Alberta
October 19, 2004 Ted Fisher (Chair)	Canadian Bar Association (Administrative Law Section) Advocacy before Tribunals Edmonton, Alberta
October 22, 2004 Gilbert Van Nes (General Counsel) Ottawa, Ontario	The Canadian Institute, Advanced Administrative Law and Practice Conference The Evolving Role of Counsel to an Administrative Tribunal: How to Wear Your Many Hats

October 27, 2004 Gilbert Van Nes (General Counsel)	University of Calgary, Environmental Law ADR and the Environmental Appeals Board Process Calgary, Alberta
November 12, 2004 Gilbert Van Nes (General Counsel)	Canadian Bar Association, Aboriginal Law Section Paul case and affect on Boards Edmonton, Alberta
November 26, 2004 Ted Fisher (Chair)	Environmental Law Centre (Brown Bag Lunch) Appearing before the Environmental Appeals Board Edmonton, Alberta
December 2, 2004 Ted Fisher (Chair)	Canadian Bar Association (Environmental Law Section South) The Environmental Appeals Board Calgary, Alberta
December 14, 2004 Steve Hrudey (Board Member)	Canadian Bar Association (Environmental Law Section North) Water Quality Edmonton, Alberta
February 17 and 18, 2005 Gilbert Van Nes (General Counsel)	Insight Information Co. Community Consultation and Land Development Overview of the Regulatory Framework in Alberta: Opportunities for Public Consultation Calgary, Alberta
March 2, 2005 Gilbert Van Nes (General Counsel) and Marian Fluker (Senior Research Officer)	University of Alberta Environmental Conservation Studies Environmental Assessment Course Town Hall Meeting – Role-Play Edmonton, Alberta
March 8, 2005 Gilbert Van Nes (General Counsel)	University of Calgary Environmental Law and Issues Course ADR and the Environmental Appeals Board Calgary, Alberta
March 10, 2005 Denise Black (Board Secretary) and Lisa Awid-Goltz (Projects Officer)	University of Alberta Faculty of Law Public Interest Career Day Edmonton, Alberta
March 15, 2005 Gilbert Van Nes (General Counsel)	University of Alberta ADR Class, Faculty of Law Negotiated Rule Making Edmonton, Alberta
March 16 and 17, 2005 Gilbert Van Nes (General Counsel)	Alberta Justice, Civil Law ADR Skill Development Course for Civil Law Lawyers Participate as a Coach Edmonton, Alberta
March 23, 2005 Gilbert Van Nes	Canadian Bar Association (Research Lawyers Section) Environmental Law Research

(General Counsel)	Edmonton, Alberta
March 30, 2005	Alberta Institute of Agrologists
William Tilleman	Banff Conference on Agriculture, Food and the Environment
(Chair)	Panel – Evidence, Sampling, and Chain of Custody: What is Needed for a Successful Court
Banff, Alberta	Battle?